

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Rural Digital Opportunity Fund ) WC Docket No. 19-126
Connect America Fund ) WC Docket No. 10-90

NOTICE OF PROPOSED RULEMAKING

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## I. INTRODUCTION

1. Broadband access is critical to economic opportunity, job creation, education and civic engagement. That is why closing the digital divide is the Commission's top priority. For communities throughout our nation to thrive and prosper, their residents must have the option to obtain high-speed Internet access.

2. Last year, the Commission took a major step forward in expanding broadband access to many parts of rural America. As a result of our successful Connect America Fund (CAF) Phase II auction, the Commission has begun providing \$1.488 billion in universal service support over ten years to build high-speed broadband service to over 700,000 households and small businesses in 45 states, with 99.75% of locations receiving at least 25/3 Mbps service and more than half receiving at least 100/20 Mbps service.

3. But more work remains to be done. For example, more than 10 million households and small businesses in price cap areas still lack access to critical broadband services that offer speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream in unserved census blocks, including more than 7 million in rural areas.<sup>1</sup> So today, the Commission proposes to build on the success of the CAF Phase II auction by establishing the Rural Digital Opportunity Fund, which will commit at least \$20.4 billion over the next decade to support high-speed broadband networks in rural America. Because the CAF Phase II auction secured higher quality services for consumers at a lower cost to the Universal Service Fund (Fund), we propose to conduct a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition. And in light of the need to bring service both to consumers in wholly unserved areas as well as those living in partially served areas, we propose to assign funding in two phases: Phase I will target those areas that current data confirm are wholly unserved, and Phase II will target those areas that are partially served as well as any areas not won in the first phase. By relying on a two-phase process, as the Commission did with the Connect America Fund, we can move expeditiously to commence an auction in 2020 while also ensuring that other areas are not left behind by holding a second auction.

4. The framework we propose today represents the Commission's single biggest step yet to close the rural digital divide and will connect millions more rural homes and small businesses to high-speed broadband networks.

## II. BACKGROUND

5. In the *USF/ICC Transformation Order*, the Commission undertook comprehensive reform of the universal service and intercarrier compensation programs to ensure that robust, affordable voice and broadband services are available to all Americans.<sup>2</sup> The Commission created the CAF and adopted a new framework—CAF Phase II—for providing ongoing support in areas served by price cap carriers, including most of the large and mid-sized incumbent telephone carriers, that would use a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and competitive bidding.<sup>3</sup> Recognizing that over 80% of unserved locations at that time were in areas served by price cap carriers, the Commission provided for up to \$1.8 billion to be spent annually

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<sup>1</sup> Staff analysis of Connect America Cost Model and December 2017 FCC Form 477 data (v.2) (includes revisions through Mar. 26, 2019), available at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>.

<sup>2</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17667, para. 1 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014).

<sup>3</sup> *Id.* at 17725, para. 156.

to build and maintain broadband-capable networks in high-cost areas, including expanding broadband access to unserved locations.<sup>4</sup>

6. The Commission delegated to the Wireline Competition Bureau (WCB or Bureau) the task of developing a specific engineering cost model and associated inputs that would estimate, at a granular level, the support needed to serve areas where costs are above a specified cost benchmark, but below an “extremely high-cost” benchmark.<sup>5</sup> The Commission decided it would offer each price cap eligible telecommunications carrier (ETC) a model-based support amount in exchange for a commitment to serve all locations in its service territory in a state that fall within the high-cost range and are not served by a competing, unsubsidized provider.<sup>6</sup> As part of this state-level commitment, the ETC would be required to ensure that the service it offers meets specified voice and broadband performance criteria. In areas where the price cap ETC declined a state-level commitment, support would be determined through a competitive bidding mechanism.<sup>7</sup>

7. The Commission excluded from price cap carriers’ CAF Phase II broadband service obligations the remote and hardest to serve areas where the model-estimated cost to provide terrestrial voice and broadband service was above the extremely high-cost benchmark. The Commission established a separate budget of at least \$100 million per year to support service to these areas, which included fewer than 1% of American homes, through the Remote Areas Fund.<sup>8</sup>

8. Pursuant to its delegated authority, the Bureau adopted the model platform in April 2013, which included key assumptions about design of the network and network engineering.<sup>9</sup> The following year, the Bureau finalized decisions regarding the engineering assumptions contained in the Connect America Cost Model (CAM) and adopted the inputs necessary for the model to calculate the cost of serving census blocks in price cap carrier areas.<sup>10</sup> On April 29, 2015, the Bureau announced the offers of model-based Phase II support to price cap carriers, with funds totaling \$1.675 billion annually for six calendar years (2015-2020) to support the deployment of voice and broadband-capable networks in their service territories.<sup>11</sup>

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<sup>4</sup> *Id.* at 17725, para. 158.

<sup>5</sup> *Id.* at 17725, paras. 156-57.

<sup>6</sup> *Id.* at 17725, paras. 156-57. The Commission defined an unsubsidized competitor as a “facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support.” *Id.* at 17701, para. 103; *see also* 47 CFR § 54.5 (defining “unsubsidized competitor”).

<sup>7</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17725, para. 156, 17732-33, para. 179.

<sup>8</sup> *Id.* at 17837-38, paras. 533-34.

<sup>9</sup> *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, 28 FCC Rcd 5301 (WCB 2013) (*CAM Platform Order*).

<sup>10</sup> *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, 29 FCC Rcd 3964 (WCB 2014) (*CAM Inputs Order*). The CAM contains two modules. The first is a cost module that calculates costs of providing service for all areas of the country. That module itself has two parts—one part that determines an efficient routing to ensure each location is “passed” by a network, namely a network topology, and a second part that calculates the costs associated with that network topology. The second module of the CAM is the support module, which calculates the support needed for each area based on those costs.

<sup>11</sup> *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 3905 (WCB 2015) (*CAF II Offer Public Notice*). The offer of model-based support was targeted to census blocks lacking unsubsidized competitors offering service at speeds of less than 4/1 Mbps. *Id.* at 3905 & n.1. Price cap carriers accepted over \$1.5 billion in annual support to expand broadband and support broadband for nearly 7.3 million rural consumers in 45 states and one territory. FCC News Release, August 27, 2015, <https://www.fcc.gov/document/carriers-accept-over-15-b-support-expand-rural-broadband>. As of March 1, 2019, CAF Phase II model-based support recipients

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9. Although the Commission concluded that it should ultimately rely on market-based mechanisms to ensure the most efficient and effective use of public resources, the CAF was created against a backdrop of a decades-old regulatory system and the continued existence of legacy obligations. The Commission sought to avoid consumer disruption, including the loss of traditional voice service, while expanding broadband to substantial numbers of unserved rural Americans as quickly as possible.<sup>12</sup> Thus, the Commission offered incumbent price cap carriers a one-time opportunity to receive support for a specified term in exchange for defined public service obligations including offering broadband at speeds of at least 10/1 Mbps over their service areas in each state. The Commission anticipated that after that term of support ended, all high-cost support in price cap areas would be awarded through a competitive bidding process in which all eligible providers will be given an equal opportunity to compete.<sup>13</sup> To ensure there would be continuity and a transition path to what would come next, the Commission expected to conduct a competitive bidding process before the end of the six-year term of support.<sup>14</sup>

10. In May 2016, the Commission adopted rules to implement the competitive bidding process for CAF Phase II and finalized decisions regarding eligible areas, which included areas in which price cap carriers declined model-based support and other areas unserved by robust broadband.<sup>15</sup> In February 2018, the Commission established procedures for the CAF Phase II auction, which began on July 24, 2018.<sup>16</sup> On August 28, 2018, the Rural Broadband Auctions Task Force, Wireless Telecommunications Bureau (WTB), and the Bureau announced that bidding in the CAF Phase II auction concluded on August 21, 2018.<sup>17</sup> The auction yielded 103 winning bidders, with the 10-year support amount totaling \$1.488 billion and covering 713,176 locations in 45 states.

11. *Broadband Deployment on Tribal Lands.* To date, the Commission has taken several steps across its universal service programs to increase broadband deployment and adoption on Tribal lands.<sup>18</sup> To bring fixed broadband service to individual communities and locations, the Commission has relied on the high-cost program. CAF Phase II employed a two-step approach to provide ongoing support to deploy and maintain voice and broadband services in areas previously lacking broadband availability,

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have reported deploying 10/1 Mbps or better to more than 6.4 million consumers by December 31, 2018. See Connect America Fund Broadband Map, <https://data.usac.org/publicreports/caf-map/>.

<sup>12</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17727, para. 165.

<sup>13</sup> *Id.* at 17732, para. 178.

<sup>14</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15656, para. 31 (2014) (*December 2014 Connect America Order*).

<sup>15</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*Phase II Auction Order and/or FNPRM*).

<sup>16</sup> *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, AU Docket No. 17-182, WC Docket No. 10-90, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*). The CAF Phase II auction was designated “Auction 903—Connect America Fund Phase II” when it was scheduled and the Commission adopted auction procedures. *Id.* at 1432, para. 7.

<sup>17</sup> *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (WTB and WCB 2018) (*Auction 903 Closing Public Notice*).

<sup>18</sup> See e.g., *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8967-8970, paras. 243-49 (2014); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574 (2018); *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 (2017).

including remote Tribal areas. As of December 31, 2018, price cap carriers that accepted CAF Phase II model-based support have reported in the High Cost Universal Broadband (HUBB) portal offering service of at least 10/1 Mbps to over 50,000 locations in Tribal census blocks.<sup>19</sup> In the CAF Phase II auction, winning bidders committed to serve a total of 76,710 locations in 17,895 Tribal census blocks.

### III. DISCUSSION

12. Closing the digital divide and bringing robust, affordable high-speed broadband to all Americans is the Commission's top priority. By improving access to modern communications services, we can help provide individuals living in rural America with the same opportunities as their urban counterparts. The Rural Digital Opportunity Fund we propose today is a critical next step in our high-cost program and ongoing effort to close the digital divide. By committing at least \$20.4 billion over the next ten years, the Commission will bring broadband service at minimum speeds of 25/3 Mbps to millions of Americans living in the areas that need it most—including those living on Tribal lands. And our two-phase approach will ensure that completely unserved areas are prioritized, so that support can begin to flow quickly while we work to improve the data needed to most efficiently target support over the longer term. At the same time, by awarding support through a competitive bidding mechanism and targeting investment to areas where there is currently no private sector business case to deploy broadband without assistance, the Commission will ensure that its limited universal service support is awarded in an efficient and cost-effective manner, without overbuilding to areas that already have service. Finally, the proposals we adopt today include measures to require accountability, so we can ensure that our public investments are used wisely to deliver intended results.

13. We seek comment on our overall approach in establishing a Rural Digital Opportunity Fund. We propose that the Commission's adoption of a Rural Digital Opportunity Fund framework will be guided by the following goals: (1) ensuring that high-speed broadband is made available to all Americans quickly, and at an affordable price; (2) reducing waste and inefficiency in the high-cost program and promoting the use of incentive-based mechanisms to award support; (3) requiring accountability to ensure that public investments are used wisely to deliver intended results; and (4) minimizing the contribution burden. Does the framework we propose strike the right balance in helping to achieve those proposed objectives? Are there any other goals that should guide this process? How can the Commission measure progress against these proposed goals? In commenting on the detailed proposals that follow, parties are invited to discuss how the proposals (or any alternatives) can best be focused to achieve our proposed goals. Moreover, the Universal Service Fund is a federal-state partnership. Are there ways the Rural Digital Opportunity Fund can facilitate that partnership?

14. The approach we take today leverages our experience with the CAF program, and the CAF Phase II auction in particular. But it also acknowledges that market realities have changed since the CAF framework was first established in 2011. Consumers' demand for faster speeds has grown dramatically—and the market has largely been able to deliver. Speeds of 25/3 Mbps are widely available, and 25/3 Mbps is the Commission's current benchmark for evaluating whether a fixed service is advanced-telecommunications capable. Thus, the item proposes a 25/3 Mbps service availability threshold as the basis for establishing eligible areas. Demand for greater speeds will continue to rise. The framework we propose today therefore takes a flexible approach that prioritizes faster, gigabit speeds. Our proposals also acknowledge that, despite the Commission's expectation that broadband would be deployed to many areas without high-cost support, some of these areas remain unserved. The Notice proposes including these areas in the Rural Digital Opportunity Fund auction. In light of these dynamic

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<sup>19</sup> Staff Analysis of Dec. 31, 2018 HUBB data available at <https://data.usac.org/publicreports/caf-map/>. ETCs that reported these data continue to make modifications to improve the accuracy of the information they have submitted. *See, e.g.*, Letter from Mike Saperstein, Vice President, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Mar. 28, 2019) (noting that its "members report a substantial degree of geocoordinate variability based upon which mapping vendor the carrier uses").

marketplace changes, we believe that a new support mechanism is better able to meet our objectives than continuing with the existing CAF framework. We seek comment on this conclusion.

**A. Term of Support**

15. We propose adopting a term of support of 10 years for the Rural Digital Opportunity Fund. For the CAF Phase II auction, the Commission acknowledged that “some entities may be unwilling to make necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term” and that “providing support for a period of ten years may stimulate greater interest” in the auction.<sup>20</sup> We believe that the 10-year term of support was partially responsible for the robust participation that occurred in the CAF Phase II auction and expect that the same principles regarding encouraging long-term investments and auction participation will also apply to the Rural Digital Opportunity Fund.<sup>21</sup> Thus, we propose to adopt the same support term here. We seek comment on this proposal.

**B. Budget**

16. We propose a budget of at least \$20.4 billion for the Rural Digital Opportunity Fund. The budget is premised on the CAM estimated cost of deploying a high-speed broadband network to all locations in wholly unserved price cap census blocks that exceed the existing high-cost threshold of \$52.50 per-location per-month, and with that cost capped at \$198.60. These census blocks are considered wholly unserved because no provider is offering both voice service as well as 25/3 Mbps terrestrial fixed broadband service.<sup>22</sup> Bureau staff estimate that there are 3.9 million locations in these census blocks. We seek comment on this budget and this analysis.

17. Of this budget, we propose to make available at least \$16 billion for Phase I of the Rural Digital Opportunity Fund, and to make the remaining \$4.4 billion from the total budget, as well as any unawarded funds from Phase I, available for Phase II. Three considerations guide us. First, \$16 billion reflects the sum of the total amount of CAF Phase II model-based support currently received by price cap carriers (\$1.5 billion per year) and the support amount the Commission once envisioned for the Remote Areas Fund (at least \$100 million per year). Second, the budget balances our goals of ensuring greater broadband deployment in rural America and efficient use of the Fund. We propose a budget that will lead to more robust inter-area competition in the auction, which will lead to service being provided at a lower cost in the areas awarded support. In the CAF Phase II auction, much of the bidding was driven by the fact that the total budget (\$2 billion) was significantly less than the aggregate reserve prices of all areas in the auction (\$6 billion). The inter-area competition, as well as the intra-area competition, ultimately drove down the support required to provide service from a model-estimated \$5 billion to only \$1.488 billion. We seek to have a similarly efficient outcome for Phase I of the Rural Digital Opportunity Fund and hence propose to have an aggregate reserve price that well exceeds the auction budget by expanding

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<sup>20</sup> *Connect America Fund et al.*, WC Docket No. et al., Report and Order et al., 29 FCC Rcd 7051 7061-62, para. 35 (2014) (*April 2014 Connect America Order*) (quoting *Tech Transitions et al.*, GN Docket No. 13-5 et al., Order et al., 29 FCC Rcd 1433, 1476-77, paras. 123-26 (2014) (*Tech Transitions Order*)).

<sup>21</sup> The Commission has used a 10-year support term on numerous other occasions. *Connect America Fund et al.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12092, para. 22 (2016) (*ACS Phase II Service Obligations Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10150, para. 32 (2016) (*Alaska Plan Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3097, para. 22 (2016) (*2016 Rate-of-Return Reform Order*); *Tech Transitions Order*, 29 FCC Rcd at 1476-77, paras. 123-26 (all adopting 10-year terms of support).

<sup>22</sup> Staff analysis of December 2017 FCC Form 477 data (v.2) (includes revisions through Mar. 26, 2019) and FCC Form 477 Filers by State as of June 30, 2017 (includes revisions through Nov. 13, 2018), available at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> and <https://www.fcc.gov/general/form-477-filers-state-0>.

the eligible census blocks beyond those used in calculation of the budget, modifying the reserve prices from those used in the budget calculation, and adjusting the budget from \$20.4 billion to \$16 billion. Third, the fact that any areas unawarded in the Phase I auction will roll over into the Phase II auction militates in favor of ensuring there is adequate inter-area competition in Phase I—our two-phase plan for the Rural Digital Opportunity Fund means we can ensure an efficient auction while furthering our commitment to universal service. We seek comment on this proposal, and on alternatives for how to appropriately size the Phase I budget.

18. Finally, we recognize that achieving our universal service objectives is an ongoing process. As technologies and service levels evolve, fulfilling our objective of providing access in high-cost areas to services that are reasonably comparable to those available in urban areas means continually assessing the need to support services that compare to the ever-improving standard of advanced services in urban areas. Will the methodology we propose for the Rural Digital Opportunity Fund Phase I budget result in a budget that will cost-effectively achieve coverage to additional locations consistent with the public service obligations we propose for the Rural Digital Opportunity Fund? Should we reassess the adequacy of the total budget after the Phase I auction?

### C. A Multi-Round, Descending Clock Auction

19. Given the success of the CAF Phase II auction, we propose to use a substantially similar reverse auction mechanism to distribute support to providers that commit to offer voice and broadband services to fixed locations.<sup>23</sup> Specifically, we propose to use a multi-round, descending clock auction to identify the providers that will be eligible to receive support and to establish the amount of support that each bidder will be eligible to receive using procedures substantially similar to those used in the CAF Phase II auction.<sup>24</sup> We reiterate our preference for a multi-round auction because multiple rounds enable bidders “to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.”<sup>25</sup> We propose that the Rural Digital Opportunity Fund descending clock auction will consist of sequential bidding rounds according to an announced schedule providing the start time and closing time of each bidding round. And we propose to rely on the Commission’s existing general rules regarding competitive bidding for universal service support, with specific procedures to be developed through our standard Public Notice process.<sup>26</sup>

20. We propose that bids for different areas at specified performance tier and latency levels will be compared to each other based on area reserve prices, and performance tier and latency weights.<sup>27</sup> Likewise, we propose to use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. We propose that bids for different service tiers will be considered simultaneously, so bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards.<sup>28</sup> As the Commission did in the CAF Phase II auction, we propose calculating the implied annual support amount at a bid percentage by adjusting an area-specific reserve price for the bid percentage and the weights for

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<sup>23</sup> See Press Release, FCC, Connect America Fund Auction to Expand Broadband to and Businesses (Aug. 28, 2018), <https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf>.

<sup>24</sup> See *Auction 903 Procedures Public Notice*.

<sup>25</sup> *Phase II Auction Order*, 31 FCC Rcd at 5978-79, para. 88.

<sup>26</sup> 47 CFR § 1, Subpart AA. In the *Phase II Auction Order*, the Commission provided some basic guidance on choosing an auction design furthering its objectives for CAF Phase II competitive bidding. See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 5975-5976, para. 82. See also *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1493-1512, paras. 199-288.

<sup>27</sup> See *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1497, paras. 217-18.

<sup>28</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5957, para. 17.

the performance tier and latency combination of the bid, with implied support not exceeding the reserve price.<sup>29</sup>

21. We propose to include all Phase I eligible areas nationwide in one auction, so that bidders compete for support across all areas at the same time.<sup>30</sup> And we seek comment on whether census block groups containing one or more eligible census blocks is an appropriate minimum geographic unit for bidding for the Rural Digital Opportunity Fund. Given that the Rural Digital Opportunity Fund auctions will be much larger than the CAF Phase II auction, would a larger minimum geographic unit, like census tracts or counties, be more manageable? Are there other or more efficient ways to group census blocks for purposes of the auction?

22. We seek comment on all these proposals. We also seek comment on whether there are any rule changes that we should consider for the Rural Digital Opportunity Fund auction that would lead to greater efficiency or better outcomes for the Fund and rural consumers.

#### **D. Deployment Obligations**

23. *Public Interest Obligations.* Given the success of the CAF Phase II auction in obtaining commitments from winning bidders for the deployment of robust service from a variety of service providers,<sup>31</sup> we propose to adopt similar technology-neutral standards for services supported by the Rural Digital Opportunity Fund. Specifically, we propose to permit bids in the Baseline, Above-Baseline, and Gigabit performance tiers with the same speed and usage allowance requirements as the CAF Phase II auction and to place low latency or high latency bids meeting the same latency requirements as the CAF Phase II auction high and low latency bidders. Specifically, Baseline performance means 25/3 Mbps speeds with a 150 gigabytes (GB) monthly usage allowance or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customers, whichever is higher,<sup>32</sup> Above-Baseline performance means 100/20 Mbps speeds with 2 terabytes (TB) of monthly usage,<sup>33</sup> and Gigabit performance means 1 Gbps/500 Mbps speeds with a 2 TB monthly usage allowance.<sup>34</sup> In turn, low

<sup>29</sup> *Auction 903 Procedures Public Notice*, 32 FCC Rcd at 1497-98, paras. 217-22 (citing the Commission's prior decisions on performance tiers and latency in the *Phase II Auction Order* and on weights to compare bids in *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624 (2017) (*Phase II Auction FNPRM Order*)).

<sup>30</sup> Like with the CAF Phase II auction, the census blocks that are served by price cap carriers that serve non-contiguous areas and elected to receive frozen support in lieu of CAF Phase II model-based support will not be eligible for the auction including Alaska, Puerto Rico, and the U.S. Virgin Islands. See, e.g., *Wireline Competition Bureau Releases List and Map of Eligible Census Blocks for the Connect America Phase II Auction (Auction 903)*, Au Docket No. 17-182, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 10381, 10383 (WCB 2017) (*Eligible Census Block List Public Notice*).

<sup>31</sup> See Federal Communications Commission, *Public Reporting System, Connect America Phase II: Assignments-Winning Bidders*, [https://auctiondata.fcc.gov/public/projects/auction903/reports/winning\\_bidders](https://auctiondata.fcc.gov/public/projects/auction903/reports/winning_bidders) (last visited Apr. 15, 2019).

<sup>32</sup> *Phase II Auction Order*, 33 FCC Rcd at 5959-60, paras. 24-25. See also *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 12316, 12318-19 (WCB 2018) (*2019 Urban Rate Survey Public Notice*).

<sup>33</sup> *Phase II Auction Order*, 33 FCC Rcd at 5960, para. 26; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73.

<sup>34</sup> *Phase II Auction Order*, 33 FCC Rcd at 5960, para. 27; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73. WCB, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology acknowledged that "it is currently unrealistic to expect that providers obligated to provide gigabit service, i.e., speeds of 1,000 Mbps, achieve actual speeds of 1,000 Mbps download at the customer premises." Instead, they adopted a measurement standard that "requires gigabit carriers to demonstrate that 80% of their testing hours

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latency means 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds,<sup>35</sup> and high-latency means 95% or more of all peak period measurements of network round trip latency are at or below 750 milliseconds and a demonstration of a score of four or higher using the Mean Opinion Score with respect to voice performance.<sup>36</sup> Authorized support recipients would have the flexibility to use any fixed broadband technology to meet the required performance obligations and service milestones associated with their winning bids. Like all high-cost ETCs, Rural Digital Opportunity Fund support recipients would be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas.<sup>37</sup> We seek comment on these proposals. We also seek comment on whether we should tie the capacity requirements of all tiers to the average usage of a majority of fixed broadband customers, should it increase above the minimums we establish here.

24. We propose not to include a Minimum performance tier, which required 10/1 Mbps broadband in the CAF Phase II auction.<sup>38</sup> The Commission has since recognized that “access to 25/3 Mbps broadband service is not a luxury for urban areas, but important to [all] Americans where they live.”<sup>39</sup> We seek comment on this proposal.

25. As in the CAF Phase II auction, we propose using weights to reflect our preference for higher speeds, higher usage allowances, and low latency. There the Commission adopted weights of 65 for the Minimum performance tier, 45 for the Baseline performance tier, 15 for the Above Baseline performance tier, and 0 for the Gigabit performance tier,<sup>40</sup> as well as a weight of 25 for high latency bids and 0 for low latency bids.<sup>41</sup> Accordingly, the spread between the best and least performing tiers was 90 points.<sup>42</sup> With our proposed elimination of the Minimum performance tier, we can maintain that same 90-point spread between the best and least performing tiers in the Rural Digital Opportunity Fund auction by adjusting the weights for each tier as proposed below. To encourage the deployment of higher speed services, and in recognition that terrestrial fixed networks may serve as a backbone for 5G deployments, these proposed weights favor higher-than Baseline speeds and low-latency services. We seek comment on this proposal. Alternatively, should we increase the 90-point spread between the best and least performing tiers to something higher—e.g., 95% or more?

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download speed tests are at or above 80% of 1,000 Mbps, i.e., 800 Mbps.” *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6529-30, para 55 (WCB/WTB/OET 2018) (petitions for reconsideration pending) (*CAF Performance Measurements Order*).

<sup>35</sup> *Phase II Auction Order*, 33 FCC Rcd at 5960, para. 29.

<sup>36</sup> *Id.* at 5960-61, para. 30; *CAF Performance Measurements Order*, 33 FCC Rcd at 6525-26, paras. 44-46.

<sup>37</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17693-94, 17708, paras. 80, 84, 113; *December 2014 Connect America Order*, 29 FCC Rcd at 15686-87, paras. 120-23; *see also* 47 CFR § 54.313(a)(2), (3); *2019 Urban Rate Survey Public Notice*, 33 FCC Rcd 12316.

<sup>38</sup> In the CAF Phase II auction, only 0.25% of locations were awarded at the Minimum performance tier, and so we expect that its exclusion will have minimal impact on the results of the Rural Digital Opportunity Fund auction. *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, para. 1.

<sup>39</sup> *Connect America Fund, et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11894, para. 3 (2018) (*December 2018 Rate-of-Return Order*).

<sup>40</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1629-35, paras. 19-30.

<sup>41</sup> *Id.* at 1635-39, paras. 31-34.

<sup>42</sup> For the CAF Phase II auction, a bidder placing a Minimum high latency bid would have a weight of 90 (65 + 25) and a bidder placing a Gigabit low latency bid would have a weight of 0.

Proposed Performance Tiers, Latency, and Weights

Performance Tier	Speed	Monthly Usage Allowance	Weight
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	50
Above Baseline	≥ 100/20 Mbps	≥ 2 TB or U.S. median, whichever is higher	25
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB or U.S. median, whichever is higher	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS ≥ 4	40

26. To ensure that Rural Digital Opportunity Fund support recipients meet the relevant speed, usage allowance, and latency requirements, we propose subjecting them to the same framework for measuring speed and latency performance and the accompanying compliance framework as are applicable to all other recipients of high-cost support required to serve fixed locations.<sup>43</sup> The adopted framework generally provides high-cost support recipients flexibility in choosing solutions to conduct the required testing.

27. We seek comment on these proposals and on whether any alternative deployment obligations, performance requirements, weights, or testing methodologies should be adopted for recipients of Rural Digital Opportunity Fund support. Commenters proposing alternatives should explain how their proposal will balance the objectives of maximizing our limited budget and guarding against widening the digital divide by ensuring that rural Americans do not fall further behind those living in urban areas.

28. *Service Milestones.* We also propose to adopt the same service milestones for the Rural Digital Opportunity Fund that the Commission adopted for the CAF Phase II auction.<sup>44</sup> Specifically, we propose that support recipients complete construction and commercially offer voice and broadband service to 40% of the requisite number of locations in a state by the end of the third year of funding authorization, and an additional 20% in subsequent years, with 100% by the sixth year.<sup>45</sup> As an alternative, should we require support recipients to build out more quickly earlier in their support terms by offering voice and broadband to 50% of the requisite number of locations in a state by the end of the third year of funding authorization? A support recipient would be deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it

<sup>43</sup> *CAF Performance Measurements Order*, 33 FCC Rcd 6509.

<sup>44</sup> *See Phase II Auction Order*, 31 FCC Rcd at 5963, para. 39 (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15657-59, paras. 36-37).

<sup>45</sup> 47 CFR § 54.310(c); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

within 10 business days upon request.<sup>46</sup> All support recipients would also have to advertise the availability of their services through their service areas.<sup>47</sup> Compliance would be determined on a state-level basis so that a support recipient would be in compliance with a service milestone if it offers service meeting the relevant performance requirements to the required number of locations across all of the awarded areas included in its winning bids in a state.<sup>48</sup>

29. The Commission also gave CAF Phase II auction support recipients some flexibility in their service obligations to address unforeseeable challenges to meeting those obligations.<sup>49</sup> We propose to adopt the same flexibility with an accompanying reduction in support that the Commission adopted for the CAF Phase II auction in recognition that facts on the ground may necessitate some flexibility regarding the final service milestone. Specifically, support recipients that have offered service to at least 95%, but less than 100%, of the number of funded locations at the end of the support term will be required to refund support based on the number of funded locations left unserved in that state.<sup>50</sup> We seek comment on these proposals.

30. We recognize that there may be some disparity between the number of locations specified by the CAM and the “facts on the ground.” For the offer of model-based support, the Commission directed the Bureau to address situations where a price cap carrier brings to the Bureau’s attention any known disparity.<sup>51</sup> We note that no price cap carrier receiving CAF Phase II model-based support has asked the Bureau to modify its number of required locations in a state. For the CAF Phase II auction, the Commission will permit support recipients to bring to its attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible census blocks within their winning bid areas in a state.<sup>52</sup> If a support recipient could sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all of the census blocks for which it won support in a state, its deployment obligation and support will be reduced on a pro rata basis. We propose to follow this same course here and direct the Bureau to establish a process for such adjustments.<sup>53</sup> As an alternative, should we use a different source to address location disparities?<sup>54</sup> Likewise, if the Digital Opportunity Data Collection is adopted,<sup>55</sup> should different rules apply for Phase I and Phase II of the proposed auction?<sup>56</sup>

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<sup>46</sup> *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Red 12900, 12902 (WCB 2016) (*WCB Location Guidance Public Notice*).

<sup>47</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>48</sup> *Phase II Auction Order*, 31 FCC Red at 5966, para. 45.

<sup>49</sup> 47 CFR § 54.310 (c)(2); *Phase II Auction Order*, 31 FCC Red at 5966, para. 45.

<sup>50</sup> 47 CFR § 54.310 (c)(2); *Phase II Auction Order*, 31 FCC Red at 5966, para. 45. The reduction of support is computed based on the average support per location in the state times 1.89. 47 CFR § 54.310(c)(2).

<sup>51</sup> *December 2014 Connect America Order*, 29 FCC Red at 15659, para. 38 & n.88.

<sup>52</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Red 1380, 1389, para. 23 (2018) (*Phase II Auction Reconsideration Order*).

<sup>53</sup> *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, 33 FCC Red 8620 (WCB 2018) (*Locations Adjustment Public Notice*).

<sup>54</sup> See *infra* note 84.

<sup>55</sup> See *infra* note 83.

<sup>56</sup> Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 et al., at 2 (filed July 24, 2019) (USTelecom July 24, 2019 *Ex Parte* Letter).

(continued....)

31. We also seek comment on whether there are additional measures we could adopt that would help ensure that Rural Digital Opportunity Fund support recipients will meet their third-year service milestones, and further seek comment on what steps we should take if it appears support recipients will not be able to meet their service milestones.

32. *Reporting Requirements.* To ensure that support recipients are meeting their deployment obligations, we propose to adopt the same reporting requirements for the Rural Opportunity Digital Fund that the Commission adopted for the CAF Phase II auction. Specifically, we propose requiring Rural Digital Opportunity Fund support recipients to annually file the same location and technology data in the HUBB and to make the same certifications when they have met their service milestones,<sup>57</sup> and we would encourage them to file such data on a rolling basis.<sup>58</sup> We also propose requiring Rural Digital Opportunity Fund support recipients to file the same information in their annual FCC Form 481s that we require of the CAF Phase II auction support recipients.<sup>59</sup> Specifically, in addition to the certifications and information required of all high-cost ETCs in the FCC Form 481,<sup>60</sup> Rural Digital Opportunity Fund support recipients would be required to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements,<sup>61</sup> and support recipients would be required to identify the number, names, and addresses of community anchor institutions to which they newly began providing access to broadband service in the preceding calendar year<sup>62</sup> as well as identify the total amount of support that they used for capital expenditures in the previous calendar year.<sup>63</sup> Moreover, support recipients would need to certify that they have available funds for all project costs that will exceed the amount of support they will receive in the next calendar year.<sup>64</sup>

33. Additionally, Rural Digital Opportunity Fund support recipients would be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as all other high-cost ETCs.<sup>65</sup> In addition, support recipients that are designated by the Commission would need to self-certify.<sup>66</sup>

34. We seek comment on these proposals and whether we need to make any adjustments to this reporting framework for Rural Digital Opportunity Fund support recipients. To the extent commenters propose that we adopt different public interest obligations or service milestones or make

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USTelecom suggests that different rules should apply for Phase I and Phase II of the auction, if Digital Opportunity Data Collection results are not available during Phase I of the auction but are available for Phase II.

<sup>57</sup> 47 CFR § 54.316(a)(4), (c)(2); *Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173.

<sup>58</sup> *Phase II Auction Order*, 31 FCC Rcd at 6011, para. 173. The Commission explained that it would be a "best practice" to submit location information "no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations." *Id.*

<sup>59</sup> 47 CFR § 54.313.

<sup>60</sup> 47 CFR § 54.313(a).

<sup>61</sup> 47 CFR § 54.313(e)(2)(iii); *Phase II Auction Order*, 31 FCC Rcd at 6011-12, para. 176.

<sup>62</sup> 47 CFR § 54.313(e)(2)(i)(A).

<sup>63</sup> 47 CFR § 54.313(e)(2)(i)(B); *Phase II Auction Order*, 31 FCC Rcd at 6012, para. 178.

<sup>64</sup> 47 CFR § 54.313(e)(2)(ii); *Phase II Auction Order*, 31 FCC Rcd at 6012, para. 179. Once the requirement has been fully implemented, CAF Phase II auction support recipients must also annually make a certification regarding their bidding in the schools and libraries universal service support program (E-rate). 47 CFR § 54.313(e)(1)(ii)(C).

<sup>65</sup> 47 CFR §§ 54.313(j), 54.314, 54.316(c), 54.320.

<sup>66</sup> 47 CFR § 54.314(b).

other changes to relevant proposals, they should also address whether the Commission needs to make any adjustments to its reporting framework to account for the proposed changes.

35. To minimize the administrative burden on the Commission, the Universal Service Administrative Company (USAC), and Rural Digital Opportunity Fund support recipients, we also seek comment on how the Commission can align service milestones, service milestone certifications, and location reporting deadlines for all Rural Digital Opportunity Fund support recipients, even though the long-form applicants may be authorized to receive support on different dates. For example, to minimize administrative burdens on the Commission and USAC and to simplify reporting for support recipients, should we align the service milestones and reporting deadlines for the Rural Digital Opportunity Fund with those for other high-cost programs?<sup>67</sup> Specifically, regardless of when a Rural Digital Opportunity Fund recipient is authorized to receive support, should each service milestone occur on a date certain, such as June 30 or December 31? Should support recipients be required to certify that they have met the applicable service milestone and to submit a list of locations where they offer service within two months of such a deadline? Are there any adjustments we should make to better align the support reductions applicable to late filers with the filing deadlines?

36. *Non-Compliance Measures.* We also propose to apply the same non-compliance measures that are applicable to all high-cost ETCs, the framework for support reductions that is applicable to high-cost ETCs that are required to meet defined service milestones, and the process the Commission adopted for drawing on letters of credit for the CAF Phase II auction.<sup>68</sup> Specifically, we propose to rely on the following non-compliance tiers:

#### Non-Compliance Framework

Compliance Gap	Non-Compliance Measure
Tier 1: 5% to less than 15% required number of locations <sup>69</sup>	Quarterly reporting
Tier 2: 15% to less than 25% required number of locations	Quarterly reporting + withhold 15% of monthly support
Tier 3: 25% to less than 50% required number of locations	Quarterly reporting + withhold 25% of monthly support
Tier 4: 50% or more required number of locations	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date

<sup>67</sup> See 47 CFR § 54.316.

<sup>68</sup> 47 CFR § 54.320(d)(1)(i)-(iv); *December 2014 Connect America Order*, 29 FCC Rcd at 15695-98, paras. 147-50. A compliance gap is the percentage of required locations that a recipient has not served by the relevant service milestone. For example, assume a Rural Digital Opportunity Fund recipient is required to serve 100 locations by the end of the build-out period. If the Commission adopts its service milestone proposal, the recipient will be required to serve 40% of those locations by the end of the third year of support (i.e., 40 locations). If at the end of the third year of support the recipient has only built out to 36 locations, it will have Tier 1 status (this would be a compliance gap of 10%: 40 minus 36 = 4, 4 is 10% of 40).

<sup>69</sup> The Commission did not impose reporting obligations if an ETC missed an interim milestone by less than 5% of the required number of locations for that interim milestone. However, it did reserve the right to impose quarterly reporting in individual instances if the ETC shows no progress in addressing the shortfall by the fifth year of support. *December 2014 Connect America Order*, 29 FCC Rcd at 15695, para. 147 & n.323.

37. A support recipient would have the opportunity to move tiers as it comes into compliance and will receive any support that has been withheld if it moves from one of the higher tiers to Tier 1 status during the build-out period.<sup>70</sup> If a support recipient misses the final service milestone, it would have 12 months from the date of the final service milestone deadline to come into full compliance.<sup>71</sup> If it does not report that it has come into full compliance, USAC would recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total relevant high-cost support over the support term for that state.<sup>72</sup> The same support reduction would apply if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone.<sup>73</sup>

38. As in the CAF Phase II auction, USAC would be authorized to draw on the letter of credit to recover all of the support that has been disbursed in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the cure period, and does not repay the Commission the support associated with the non-compliance gap within a certain amount of time.<sup>74</sup> If a support recipient is in Tier 4 status during the build-out period or has missed the final service milestone, and USAC has initiated support recovery as described above, the support recipient would have six months to pay back the support that USAC seeks to recover.<sup>75</sup> If the support recipient does not repay USAC by the deadline, the Bureau would issue a letter to that effect and USAC would draw on the letter of credit to recover all of the support that has been disbursed.<sup>76</sup> If a support recipient has closed its letter of credit and it is later determined that the a support recipient does not have sufficient evidence to demonstrate that it is offering service to the total number of required locations, that support recipient would be subject to additional non-compliance measures if it does not repay the Commission after six months.<sup>77</sup> And like other high-cost ETCs, support recipients would be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.<sup>78</sup>

39. We seek comment on these proposals. To the extent that commenters recommend any changes to the proposed service milestones or other rules, they should also comment on whether their proposals would require any changes to these non-compliance measures. Commenters should also explain how their proposals encourage support recipients to comply with the Commission's rules and accomplish the Commission's oversight responsibilities, including protecting the integrity of the Universal Service Fund.

40. *Additional Performance Targets.* We also seek comment on whether we should adopt additional performance targets to provide better incentives for Rural Digital Opportunity Fund support recipients to sign up customers in the eligible areas. Specifically, we seek comment on how to ensure that support recipients have sufficient incentives for support recipients to pursue customers in the eligible areas. For example, spectrum-based bidders may have capacity constraints on their systems deterring

<sup>70</sup> 47 CFR § 54.320(d)(1)(v); *December 2014 Connect America Order*, 29 FCC Rcd at 15695, para. 147.

<sup>71</sup> 47 CFR § 54.320(d)(2); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

<sup>72</sup> 47 CFR § 54.320(d)(2); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

<sup>73</sup> 47 CFR § 54.320(d)(3); *December 2014 Connect America Order*, 29 FCC Rcd at 15697-98, para. 149.

<sup>74</sup> 47 CFR § 54.315(c)(4)(i)-(ii); *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

<sup>75</sup> 47 CFR § 54.315(c)(4)(i); *Phase II Auction Order*, 31 FCC Rcd at 6017, paras. 190-91.

<sup>76</sup> 47 CFR § 54.315(c)(4)(ii); *Phase II Auction Order*, 31 FCC Rcd at 6017, paras. 190-91.

<sup>77</sup> *Phase II Auction Order*, 31 FCC Rcd at 6017, para. 192.

<sup>78</sup> 47 CFR § 54.320(c).

them from continuing to pursue new subscribers should an increase in capacity (but not coverage, which is already mandated by the deployment milestones) require additional capital expenditures. Since Rural Digital Opportunity Fund support may require certain providers to offer much higher data caps than they do to non-Rural Digital Opportunity Fund subscribers and price the services similarly, such providers may have an incentive to limit Rural Digital Opportunity Fund subscribers to sell their capacity to more profitable non-Rural Digital Opportunity Fund subscribers. Spectrum-based providers that do not have a network sufficient to serve most locations in a geographic area would also have an incentive to limit subscription if expanding capacity would be less profitable than limiting subscription and collecting Rural Digital Opportunity Fund subsidies based purely on deployment. Even wireline bidders may lack the proper incentives to serve additional customers in some areas, given that it may not be profitable without a per-subscriber payment to run wires from the street to the customer location and install customer premises equipment. We seek comment on whether these theoretical concerns are likely to bear out in reality and what to do to address them.

41. We seek comment on a proposal to also adopt subscribership milestones for Rural Digital Opportunity Fund support recipients. For example, such a proposal could set milestones at 70% (the subscribership level assumed by the CAM) of the yearly deployment benchmarks. Hence the first subscribership benchmark could be 28% in year three, and increase 14% each year through year six, where it could remain at 70% through the end of the term of support. Would a subscribership rate that is lower than 70% be more appropriate to account for the unique challenges of serving rural areas?<sup>79</sup> If so, what subscribership rate would better reflect such challenges? Rural Digital Opportunity Fund support recipients would have the flexibility to offer a variety of broadband service offerings as long as they offer at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas.<sup>80</sup> Would it be appropriate to credit subscribers to any of the broadband services that are eligible for Rural Digital Opportunity Fund support in calculating adoption rates? To account for subscriber churn that may occur during the support term, should the adoption rate be represented as a percentage of the total potential subscriber months of the locations deployed? How should the Commission and USAC account for the fact that some support recipients may meet their service milestones more quickly than the six-year build-out schedule, and the fact that some support recipients may take advantage of the flexibility to serve only 95% of the required number of locations? We seek comment on addressing this by using the minimum required deployed locations rather than actual locations deployed in the calculation of adoption rates.

42. Under this proposal, we would condition a portion of the recipient's support on meeting the subscribership milestones. Specifically, we would withhold an amount of support equal to however many percentage points the recipient missed its subscribership milestone by. For example, if a recipient only had 27% subscribership in year three, only 1% (28% - 27%) of support would be withheld. In contrast, if a recipient only had 17% subscribership in year six, then 53% (70% - 27%) would be withheld. Notably, a recipient would receive its full annual support amount in monthly payments for the first two years of initial buildout. Such an approach could be structured by providing a monthly minimum guaranteed level of funding and an additional quarterly per-subscriber payment. We seek comment on this proposal.

43. Commenters proposing that we adopt such performance targets or similar measures should describe specifically how their proposals could be implemented within the Rural Digital Opportunity Fund framework to minimize the potential administrative burdens on the Commission, USAC, and service providers. For example, what type of reporting obligations should we impose and what types of information should we collect to verify that a consumer is subscribing to a service as

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<sup>79</sup> See USTelecom July 24, 2019 *Ex Parte* Letter at 2.

<sup>80</sup> *USF/ICC Transformation Order*, 26 FCC Red at 17693, para. 80.

claimed? How could we minimize the amount of personally identifiable information that is collected by support recipients to demonstrate that a consumer is subscribing to a service? Moreover, what measures could the Commission and USAC take to verify quickly but sufficiently a recipient's claimed subscription rate so as not to delay the disbursement of the support that is dependent on subscription rates? When should the support that is dependent on a subscription target be disbursed during the ten-year support term if an applicant's subscription rate and its build-out compliance will not be reported and verified until after the relevant support year has ended? What non-compliance measures should be taken if it is determined that an applicant has overreported its subscription rate? How should the requirement for a letter of credit be structured to provide adequate protection for the support that is guaranteed to be disbursed and the support that is dependent on meeting the subscription rate? What other safeguards should the Commission put in place?

44. Alternatively, do other aspects of the Rural Digital Opportunity Fund framework that we have proposed address these concerns? For example, would the requirement that a recipient be prepared to provide service meeting the relevant public interest obligations within 10 business days of request in order to count a location as served,<sup>81</sup> as well as the requirement that an ETC advertise the availability of its services throughout its service area provide adequate incentives for Rural Digital Opportunity Fund support recipients to pursue customers?<sup>82</sup> Would additional performance targets deter service provider participation in the auction? Would bidders that participate in the auction increase their bids to compensate for such uncertainty? Would the further complexity added to the auction by such an approach make it difficult for bidders, particularly small bidders with limited resources, to determine how much support to bid for? Are there particular challenges associated with marketing and encouraging broadband adoption in rural areas that the Commission should consider in evaluating a subscription benchmark? We seek comment on these issues and any other issues related to adopting additional performance targets or similar measures for Rural Digital Opportunity Fund support recipients and providing incentives for support recipients to meet their obligations and sign-up customers.

#### **E. Areas Eligible for the Phase I and Phase II Auctions**

45. We propose to target Rural Digital Opportunity Fund support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two stages. For Phase I, we propose to target census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps. For Phase II, we propose to target census blocks that we later determine are only partially served through the Digital Opportunity Data Collection, as well as census blocks unawarded in the Phase I auction.<sup>83</sup> Because we will have an additional opportunity to seek comment on how best to target Phase II support as we gather more granular data on where broadband has been actually deployed, we focus here on the areas eligible for Phase I of the auction.<sup>84</sup> We seek comment on this proposal.

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<sup>81</sup> *WCB Location Guidance Public Notice*, 31 FCC Rcd at 12902.

<sup>82</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>83</sup> *Establishing the Digital Opportunity Data Collection, Modernizing the FCC 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (adopted Aug. 1, 2019). Although we expect that the Commission will collect more granular broadband coverage data in the future, as proposed in the order and notice the Commission also is considering at today's meeting, there currently is no alternative source of publicly available nationwide broadband coverage data that the Commission could use to help ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements. By targeting census blocks with no reported 25/3 Mbps broadband service, we are proposing to support areas where we know there is currently no business case to deploy broadband absent support. Waiting for the availability of more granular data before moving forward would only punish those millions of Americans that we know do not have access to digital opportunity.

<sup>84</sup> Several parties have proposed methodologies for obtaining more granular broadband coverage data. For example, the USTelecom and the Broadband Mapping Consortium have developed a proposal to create a "Broadband Serviceable Location Fabric," which is "a consistent location fabric where all serviceable locations (e.g., the house, (continued....))



46. We propose to make several areas initially eligible for Phase I of the Rural Digital Opportunity Fund auction. *First*, we propose to include the census blocks for which price cap carriers currently receive CAF Phase II model-based support. *Second*, we propose to include any census blocks that were eligible for, but did not receive, winning bids in the CAF Phase II auction. *Third*, we propose to include any census blocks where a CAF Phase II auction winning bidder has defaulted. *Fourth*, we propose to include the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps. *Fifth*, we propose to include census blocks served by both price cap carriers and rate-of-return carriers to the extent that census block is in the price cap carrier's territory.<sup>85</sup> We propose to use the most recent study area boundary data filed by the rate-of-return carriers to identify their service areas and determine the portion of each census block that is outside this service area.<sup>86</sup> *Sixth*, we propose to include any census blocks that are currently unserved outside of price cap carriers where there is no certified high-cost ETC providing service, such as the Hawaiian Homelands,<sup>87</sup> and any other populated areas unserved by either a rate-of-return or price cap carrier. *Seventh*, we propose to include any census blocks identified by rate-of-return carriers as ones where they do not expect to extend broadband (as we did with the CAF Phase II auction).<sup>88</sup> We seek comment on these proposals.

47. Are there any other areas that we should include in the initial list of eligible areas? For example, the Commission decided to assign support by auction to areas in legacy rate-of-return areas that are almost entirely overlapped by an unsubsidized competitor in the *December 2018 Rate-of-Return Reform Order*.<sup>89</sup> We seek comment on whether we should include these areas in the Rural Digital Opportunity Fund Phase I auction.

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the small business) are located using a single methodology and thus provide a harmonized reference point for broadband reporting.” Letter from B. Lynn Follansbee, Vice President – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-10, 10-90 (filed Mar. 21, 2019); Letter from B. Lynn Follansbee, Vice President – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-10, 10-90 (filed Apr. 12, 2019). NCTA – The Internet & Television Association (NCTA) has proposed that the Commission modify the FCC Form 477 regime for reporting broadband availability by moving from the current census block-based approach to a framework based on the submission of polygon shapefiles that represent the area where each provider makes broadband service available. *See, e.g.* Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10 (filed Feb. 27, 2019); Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10, WC Docket No. 19-126 (filed June 25, 2019).

<sup>85</sup> *Phase II Auction Order*, 31 FCC Rcd at 5972, para. 66 & n.133.

<sup>86</sup> We propose to include those price cap areas that are currently served by a rate-of-return carrier due to a transfer of control. *See, e.g., See Connect America Fund et al*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 10683 (WCB 2016) (granting study area waiver to Mutual Telephone Company of Sioux Center Iowa d/b/a Premier Communications and Winnebago Cooperative Telecom Association after acquisition of Consolidated Communications' company in Iowa (Heartland Communications Company of Iowa)).

<sup>87</sup> *See Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, FCC 18-172 (Jan. 3, 2019); *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999 (2016). In 2015, the Commission directed USAC to withhold support from Sandwich Isles Communications due to its owner being convicted of federal tax fraud; since 2015, the Hawaiian Public Utilities Commission has not certified Sandwich Isles Communications per section 54.314(a), making it ineligible for high-cost support.

<sup>88</sup> *See Wireline Competition Bureau Releases Updated List of Census Blocks Eligible for the Connect America Phase II Support and Announces Deadlines for Certain Additional Updates in Price Cap and Rate-of-Return Areas*, Public Notice, 32 FCC Rcd 4775, 4778 (2017) (citing *2016 Rate-of-Return Reform Order*, 31 FCC Rcd 3087).

<sup>89</sup> *See December 2018 Rate-of-Return Order*, 33 FCC Rcd 11945-48, paras. 183-99.

48. For all census blocks on the initial list of eligible areas, we propose to exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service.<sup>90</sup> We propose to use the most recent publicly available FCC Form 477 data to identify these areas. We also propose to exclude census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service.<sup>91</sup> We propose to conduct a challenge process for the Rural Digital Opportunity Fund Phase I auction consistent with the process Commission conducted for the CAF Phase II auction, in which the Bureau released a preliminary list and map of initially eligible census blocks based on the most recent publicly available FCC Form 477 data.<sup>92</sup> Because there is an inevitable lag between the reported deployment as of a certain date and when the data are publicly released, parties would be given an opportunity to identify areas that have subsequently become served.<sup>93</sup> For example, the most recent publicly available FCC Form 477 was released on June 2, 2019, and reports deployment as of December 31, 2017. Similar to the CAF Phase II auction, it is likely that more recent FCC Form 477 data will be available prior to the Rural Digital Opportunity Fund auction. The final list of eligible areas would be based on the most recent publicly available FCC Form 477 data, but this would give the Bureau an opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors.<sup>94</sup> We seek comment on this proposal.

49. We note one caveat in our approach: We propose to treat price cap carriers differently from other providers in the areas where they have received model-based support because we already have more granular service availability data available from such carriers. Specifically, such carriers are required to report geocoded served locations to USAC through the HUBB portal. Although price cap carriers receiving model-based support were only required to offer broadband of at least 10/1 Mbps, some may have deployed higher speeds in their supported areas. We propose to include in the Rural Digital Opportunity Fund Phase I auction census blocks in which the price cap carrier receiving model-based support is the only terrestrial provider reporting the deployment of 25/3 Mbps broadband service in that block, but has not deployed such service to all locations in the block.<sup>95</sup> Locations reported as served by 25/3 Mbps service in the HUBB would be considered served for purposes of the Rural Digital Opportunity Fund, and the reserve price and deployment obligations associated with the census block

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<sup>90</sup> Whether or not a broadband provider offers voice is based on FCC Form 477 subscription data and determined at the state level. The subscription data are proprietary and the publicly available FCC Form 477 filers list indicates whether the filer provides local exchange telephone or interconnected VoIP service in a state. *See* <https://www.fcc.gov/general/form-477-filers-state-0>.

<sup>91</sup> Thus, we would exclude the blocks where a winning bidder in CAF Phase II is only obligated to deploy 10/1 Mbps (less than .3% of locations in the auction), *see Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, para. 1, as well as those areas awarded CAF Phase II support allocated through the New NY Broadband Program. *See Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Order, 32 FCC Rcd 968 (2017) (*New York Auction Order*).

<sup>92</sup> *See Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for Connect America Fund Phase II*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8870 (WCB 2016) (*Preliminary Phase II Auction Areas Public Notice*).

<sup>93</sup> *See Phase II Auction Order*, 31 FCC Rcd 5969-70, para. 57.

<sup>94</sup> *See Eligible Census Block List Public Notice*, 32 FCC Rcd 10381; *Revised List and Map of Eligible Census Blocks for the Connect America Phase II Auction (Auction 903)*, AU Docket No.17-182, WC Docket No. 10-90, 33 FCC Rcd 1166 (WCB 2018) (*Final Eligible Census Block List Public Notice*).

<sup>95</sup> In these cases, the price cap carrier could have deployed 10/1 Mbps service to some locations and 25/3 Mbps broadband service to other locations, or the price cap carrier could have deployed only 25/3 Mbps service but the number of deployed locations is less than the number determined by the CAM for the block. If HUBB data show that all locations in such a census block, as determined by the CAM, are receiving 25/3 Mbps broadband service from a price cap carrier, we would not include such a census block in the auction as it would appear to be wholly served.

would be adjusted accordingly. We propose to establish a filing deadline for reporting 25/3 Mbps service in price cap areas that would be equivalent to what other providers report in their FCC Form 477 filings. We seek comment on this proposal. Specifically, we seek comment on whether the use of HUBB data here, coupled with our broader FCC Form 477 reporting, would better determine the areas and locations that are actually unserved.<sup>96</sup>

50. As in the CAF Phase II auction, we propose to include both high-cost (i.e., those where the CAM estimates the cost per location to exceed \$52.50 per month) and extremely-high cost locations (i.e., those where the CAM estimates the cost per location to equal or exceed \$198.60 per month) in the Rural Digital Opportunity Fund auction. CAF Phase II support was targeted to “census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone” through the use of a cost benchmark that reflected the expected amount of revenue that could reasonably be recovered from end users.<sup>97</sup> Given that these areas are interspersed with lower-cost locations and with areas served by unsubsidized competitors, we expect that potential bidders are best able to identify the areas where they could deploy broadband-capable networks to the unserved areas in price cap territories. Moreover, we note that most of the areas that did not receive winning bids in the CAF Phase II auction are in areas the CAM identified as high-cost, and not extremely high-cost.<sup>98</sup> Therefore, we find that it would be inefficient to conduct a separate Remote Areas Fund auction for so few locations.

51. In turn, we propose to include at least some census blocks where the CAM suggests the costs of deployment are below the high-cost threshold but deployment has nonetheless not yet occurred. Broadband deployment data indicate that there are 6.3 million locations with costs below the \$52.50 per month benchmark that still lack high-speed broadband (including 3.4 million locations that lack even 10/1 Mbps broadband), suggesting that potential end-user revenue alone has not incentivized deployment despite the model’s predictions. We propose to include at least two subsets of such census blocks in rural areas in the Rural Digital Opportunity Fund.

52. *First*, consistent with the approach we established for Tribal areas for carriers that elected model-based rate-of-return support, we propose to implement a Tribal Broadband Factor for the Rural Digital Opportunity Fund that accounts for the unique challenges of deploying broadband to rural Tribal communities.<sup>99</sup> We therefore propose to include in the auction census blocks on Tribal lands meeting a \$39.38 per month benchmark, which reflects a 25% decrease compared to the \$52.50 funding benchmark for locations in non-Tribal census blocks.

53. *Second*, we seek comment on including other wholly unserved census blocks with estimated costs below the \$52.50 benchmark. One way to do so would be to include all such census blocks that are not part of an urbanized area (with a population equal to or greater than 50,000) or an urban cluster.<sup>100</sup> Another way would be to include all wholly-unserved census blocks with a particular

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<sup>96</sup> Should price cap carriers be given an opportunity to certify that they will upgrade service at those locations to 25/3 Mbps by the end of 2020? If these locations were eligible for and ultimately awarded support in Phase I of the auction, how could we ensure that the geolocation data for a particular location as reported by a support recipient appropriately correlates with the geolocation data reported by the price cap carrier?

<sup>97</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17728, para. 167; *CAM Inputs Order*, 29 FCC Rcd at 4040, para. 180.

<sup>98</sup> Staff analysis of Connect America Cost Model; Revised final list of census blocks eligible for the Connect America Fund Phase II auction (CAF Phase II), <https://www.fcc.gov/files/caf2auctionpublishblockfeb2018csv>; and Federal Communications Commission, *Public Reporting System, Connect America Phase II: Assignments--Winning Bidders*, [https://auctiondata.fcc.gov/public/projects/auction903/reports/winning\\_bidders](https://auctiondata.fcc.gov/public/projects/auction903/reports/winning_bidders). Of the approximately 260,000 locations that did not receive winning bids in CAF Phase II, fewer than 25,000 were extremely high-cost. *Id.*

<sup>99</sup> See *December 2018 Rate-of-Return Order*, 33 FCC Rcd at 11910-11, para. 55.

<sup>100</sup> See *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, FCC 19-62 (July 11, 2019).

cost benchmark below \$52.50, such as \$45 or \$40. What approach would better serve the Commission's goal of bringing high-speed broadband service to those without such service in rural America? We seek comment on how best to ensure that rural census blocks that are wholly unserved by high-speed broadband are appropriately included in the Rural Digital Opportunity Fund.

#### F. Reserve Prices

54. For Phase I of the Rural Digital Opportunity Fund auction, we propose to use the CAM to determine the reserve prices and number of locations for each area eligible for support in the auction. The CAM uses a combination of commercial data and census data to determine the number of residential and small business locations within each census block. Specifically, the model incorporated an address-based data set of households and business building locations and census housing unit estimates to adjust the residential locations upward or downward to match the census data.<sup>101</sup> The Commission used these data to determine the deployment obligations in a state for CAF Phase II model-based support as well as the number of locations and reserve prices for the CAF Phase II auction.<sup>102</sup> Consistent with this approach, we propose to rely on the CAM for the Rural Digital Opportunity Fund Phase I auction.

55. Pursuant to our general competitive bidding rules and consistent with the CAF Phase II auction procedures, the Commission has the discretion to establish reserve prices, i.e., maximum acceptable per-unit bid amounts.<sup>103</sup> For the Rural Digital Opportunity Fund, an area-specific reserve price should reflect the maximum price the Commission is willing to provide in support to the area. We seek to set area-specific reserve prices that are high enough to promote participation and competition in the auction, but not so high as to violate our commitment to fiscal responsibility.<sup>104</sup> As in the CAF Phase II auction, because the sum of the reserve prices for all eligible areas in the auction exceeds the budget, bidders will have to compete across areas for the limited budget.<sup>105</sup> This competition serves our universal service goals and the public interest because the support amounts that result are more cost-effective than the model-based reserve prices.

56. Consistent with the CAF Phase II auction, we propose using the CAM to establish the area-specific reserve prices based on the annual cost per location, less a benchmark to account for end-user revenue, for high-cost and extremely high-cost areas.<sup>106</sup> Additionally, as we propose to include census blocks that are split between a price cap carrier and rate-of-return carrier in Phase I of the auction, we propose to use the CAM to set the reserve price for the eligible price cap portion of the respective block. Similar to the CAF Phase II auction, we propose to set a per-location per-month cap for the reserve prices of census blocks with average costs that exceed the extremely high-cost threshold.<sup>107</sup> Specifically, we propose to set a reserve price equal to the difference between the high-cost threshold of

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<sup>101</sup> *CAM Platform Order*, 28 FCC Rcd 5301, at para. 52. For residential locations without an address or that cannot be geocoded, a random placement algorithm was used to place locations along roads of the census block. Because 96% of residential locations and 94% of business locations are geocoded, any effect on average cost in a census block, because of random placement of some locations, was expected to be small. *Id.* at para. 53 & n.115. Census blocks with no residential locations in the geocode data or the 2010 Census data were removed as possible targets for random placement of county growth locations. *CAM Inputs Order*, 29 FCC Rcd 3964, at para. 47 & n.146.

<sup>102</sup> In the *Phase II Auction Order*, the Commission decided to use the CAM to set reserve prices and to cap the amount of support in extremely high-cost areas. *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90. Reserve prices were based on the annual per-location support calculated by the CAM for each eligible census block in an eligible CBG. *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1495, para. 210.

<sup>103</sup> 47 CFR § 1.21003(c)(3).

<sup>104</sup> *See id.*

<sup>105</sup> *See Phase II Auction Order*, 31 FCC Rcd at 5975-76, paras. 80-85.

<sup>106</sup> *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1495, para. 210.

<sup>107</sup> *Id.*

\$52.50 (\$39.98 in Tribal areas) and the CAM-estimated cost of deployment, up to a \$200 cap (\$212.52 in Tribal areas). This proposal differs from our setting of reserve prices in the CAF Phase II auction in two respects. First, it accounts for the lower likely end-user revenues in Tribal areas (in the CAF Phase II auction, all areas had the same high-cost funding threshold).<sup>108</sup> Second, it raises the cap from \$146.10 to \$200 (in the CAF Phase II auction, all areas were capped at the difference between the high-cost funding threshold and the extremely high-cost threshold of \$198.60).<sup>109</sup> Both of these changes are consistent with the Commission's recent decision to adjust model-based support for its second A-CAM offering to rate-of-return carriers.<sup>110</sup> We seek comment on these proposals.

57. To the extent we include rural census blocks with estimated costs below the \$52.50 high-cost funding threshold, we seek comment on a methodology for using the CAM to establish reserve prices.<sup>111</sup> If we decide to lower the high-cost threshold outside of Tribal lands, we would propose to set reserve prices based on the new, lower threshold, such as \$40 or \$45.<sup>112</sup> This approach would allocate an amount of support to incentivize providers to include these unserved blocks in their bids, and ultimately deploy to these areas. Likewise, this approach would have the practical effect of making only census blocks that are above the new funding threshold eligible for the auction.

58. In the alternative, if we include such census blocks based on whether they qualify as rural under a population metric, we would propose to use a uniform reserve price—e.g., \$5 or \$10 per-location per-month—for all such wholly unserved census blocks. If we were to adopt such an approach, we seek comment on adding the same flat per-location amount to the reserve price of all areas so that areas with reserve prices above, but close to, the support threshold of \$52.50 would have a minimum reserve price of at least the flat amount. What would be an appropriate uniform per-location reserve price for such areas? Should the Commission consider other means of establishing reserve prices and, if so, what values are appropriate?

59. We seek comment on our proposals for setting reserve prices and on alternatives. Commenters that propose an alternative methodology for determining the reserve price for each eligible area should explain how their methodology recognizes the variation in cost to serve different locations and how their methodology provides the Commission with the ability to establish reserve prices that reflect a maximum allowable amount of support for specific eligible areas nationwide while preserving our commitment to fiscal responsibility.

60. We seek comment on prioritizing support to certain eligible areas where broadband is significantly lacking. Specifically, we seek comment on prioritizing areas that entirely lack 10/1 Mbps or better fixed service, either at the census block or census block group level. As a way to prioritize support, we seek comment on setting a reserve price for such areas that is higher than that based strictly on the model. If we were to do adopt such approach, we seek comment on how much the reserve price should be increased. Would a 10% increase give bidders a sufficiently greater incentive to bid for support for those areas? How should we consider the tradeoff between awarding more support to prioritized areas and awarding support to fewer areas overall? Should we consider using targeted bidding credits instead? Should we also prioritize areas entirely lacking 4G LTE mobile wireless broadband? We seek comment on other approaches that the Commission could consider and request that parties discuss how each mechanism could best address our goal of spurring broadband deployment to areas that entirely lack broadband service, as well as the complexity of each option for bidders and how simple each would be to

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<sup>108</sup> \$52.50 per location was derived from applying the average revenue per user of \$75 at the 70% expected subscription rate. *CAM Inputs Order*, 29 FCC Rcd 4040-4041, paras. 180-82.

<sup>109</sup> *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1495, para. 210.

<sup>110</sup> *December 2018 Rate-of-Return Order*, 22 FCC Rcd at 11910-11, paras. 55-56.

<sup>111</sup> *See supra* Section III.E.

<sup>112</sup> *See supra* para. 52.

implement and administer as we leverage the bidding system we initially developed for the CAF Phase II auction.

61. We expect to publish in conjunction with the final eligible areas list the reserve price for each eligible area. We seek comment on this proposal.

#### **G. Tribal Bidding Credit**

62. We seek comment on including a Tribal bidding credit to incentivize parties in the Rural Digital Opportunity Fund auction to bid on and serve Tribal census blocks. The Commission has previously used Tribal bidding credits in the context of spectrum auctions,<sup>113</sup> as well as in the Rural Broadband Experiments.<sup>114</sup> Is a Tribal bidding credit an appropriate approach for incentivizing parties to serve Tribal lands? Our goal for the Rural Digital Opportunity Fund is to increase deployment to rural, low-density Tribal areas that disproportionately lack access to adequate broadband services.<sup>115</sup> We seek comment on implementing a Tribal bidding credit specifically for these rural, less dense Tribal areas.

63. In the event we adopt a Tribal bidding credit for rural Tribal areas, we seek comment on the appropriate credit to incentivize carriers to bid on and serve these areas. The Commission adopted a 25% bidding credit for the Rural Broadband Experiments<sup>116</sup> and has implemented bidding credits ranging from 15% to 35% in the context of spectrum auctions.<sup>117</sup> What would be an appropriate Tribal bidding credit for carriers committing to serve Tribal census blocks? How much of an increase would incentivize carriers to commit to serve rural Tribal areas? Would a 25% bidding credit for rural Tribal areas be appropriate or would a different amount be appropriate?

64. We seek comment on other proposals to ensure Tribal areas receive bids for support in the Rural Digital Opportunity Fund, especially those rural Tribal areas that are in the most need of increased deployment. We encourage parties to be mindful of the Commission's competing goals of promoting deployment to Tribal lands and ensuring that scarce universal service funds are used efficiently and appropriately. We ask commenters to fully consider and discuss the mechanics and implementation of any proposed approach, including how it would operate within the Commission's overall universal service budget and how, or if, it should leverage any of the Commission's existing programs or infrastructure. With this information, the Commission will be able to properly consider how to allocate most efficiently the universal service budget to bring high-speed broadband service to Indian country.

#### **H. Application Process**

65. In this section, we describe and seek comment on the information we propose to collect from each Rural Digital Opportunity Fund auction applicant in its short-form and long-form applications, considering lessons we learned from the CAF Phase II auction. We propose to adopt generally the same two-step application process that the Commission adopted for the CAF Phase II auction, which we found an appropriate but not burdensome screen to ensure participation by qualified applicants while protecting the Fund, the integrity of the auction, and rural consumers.

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<sup>113</sup> See 47 CFR § 1.2110(f)(3).

<sup>114</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8784, para 44 (2014) (*Rural Broadband Experiments Order*).

<sup>115</sup> See *Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, Div. P—RAY BAUM'S Act of 2018, § 508(a)(1), 132 Stat. 348, 1095-96 (2018) (RAY BAUM'S Act of 2018) (directing the Commission to conduct a proceeding to address unserved Tribal areas); see also *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018* (CGB/WCB/WTB rel. May 1, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-357269A1.pdf> (*Tribal Broadband Report*).

<sup>116</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8784, para. 44.

<sup>117</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490; 47 C.F.R. § 54.1004(c).

66. For the CAF Phase II auction, the Commission used a two-stage application process, consisting of a short-form and long-form process.<sup>118</sup> The Commission required a pre-auction short-form application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership, as well as on applicant certifications.<sup>119</sup> The short-form application was reviewed as part of the Commission's initial screening process to determine the applicant's eligibility to bid for support.<sup>120</sup> The short-form application helped promote an effective, efficient, and fair auction, facilitating Commission staff's evaluation of whether a potential bidder was qualified to participate in the CAF Phase II auction. Applicants whose short-form applications were deemed incomplete were given a limited opportunity to cure defects and to resubmit correct applications.<sup>121</sup> Only minor modifications to an applicant's short-form application were permitted after the deadline.<sup>122</sup>

67. The Commission then performed a more extensive, post-auction review of the winning bidders' qualifications based on the required long-form application, which was an in-depth presentation of the applicants' eligibility and qualifications to receive high-cost universal service support.<sup>123</sup> For the CAF Phase II auction, all winning bidders were required to provide detailed information showing that they are legally, technically and financially qualified to receive support.<sup>124</sup>

68. We propose that all applicants for the Rural Digital Opportunity Fund auction provide basic information in their short-form applications that will enable the Commission to review and assess whether the applicant is eligible to participate in the auction, before an applicant commits time and resources to participating in the auction.<sup>125</sup> We also seek more detailed comment below on whether to require less information at the short-form stage from existing providers that have been offering a voice and/or broadband service for a certain period of time as demonstrated by the applicants' FCC Form 477. We also propose to apply the same post-auction long-form application process adopted for the CAF Phase II auction.<sup>126</sup> Accordingly, winning bidders applying for Rural Digital Opportunity Fund support would be required to provide the same showing in their long-form applications that they are legally, technically and financially qualified to receive support as required of applicants for CAF Phase II auction support.

### 1. Short-Form Application

69. We propose that the Commission's existing universal service competitive bidding rules should apply so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Rural Digital Opportunity Fund auction competitive bidding process.<sup>127</sup>

70. *Ownership.* We propose that the Commission's existing universal service competitive bidding rules should apply to the Rural Digital Opportunity Fund auction so that applicants will be

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<sup>118</sup> See *Phase II Auction Order*, 31 FCC Rcd at 5980, para. 92.

<sup>119</sup> See *id.*

<sup>120</sup> See, e.g., *id.* at 5981, para. 97.

<sup>121</sup> See *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1439, para. 25.

<sup>122</sup> See 47 CFR § 1.21001(d)(4). Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

<sup>123</sup> See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 97.

<sup>124</sup> See 47 CFR § 54.315(b).

<sup>125</sup> See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 97.

<sup>126</sup> See *id.* at 5980, para 92.

<sup>127</sup> 47 CFR § 1.21001(b).

required to provide information about ownership and agreements to establish their identity.<sup>128</sup> The Commission's rules require each applicant to disclose in its short-form application information concerning its real parties in interest and its ownership,<sup>129</sup> and to identify all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.<sup>130</sup> We propose requiring an applicant to also provide in its short-form application a brief description of any such agreements, including any joint bidding arrangements.<sup>131</sup> Commission staff used such information to identify and resolve impermissible state overlaps prior to the CAF Phase II auction.<sup>132</sup> We further propose to require every applicant to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Rural Digital Opportunity Fund auction, other than those disclosed in the short-form application. We seek comment on this process and whether our proposals efficiently and effectively promote straightforward bidding and safeguard the integrity of the auction.

71. *Technical and Financial Qualifications Certification.* The Commission's CAF Phase II auction rules required an applicant for CAF Phase II auction support to certify that it is technically and financially capable of meeting the CAF Phase II auction public interest obligations in each area for which it seeks support.<sup>133</sup> Likewise, we propose also requiring Rural Digital Opportunity Fund applicants to certify that they are technically and financially capable of meeting the applicable public interest obligations using the standards and certification criteria proposed below.

72. *Type of Technologies.* Next, consistent with the CAF Phase II auction, we propose that all applicants indicate the performance tier and latency for the bids that they plan to make and describe the technology or technologies that will be used to provide service for each bid.<sup>134</sup> Moreover, we propose that applicants submit with their short-form applications any information or documentation to establish their eligibility for any bidding weights or preferences that the Commission ultimately adopts.<sup>135</sup> Consistent with the CAF Phase II auction, we also propose allowing an applicant to use different technologies within a state and use hybrid networks to meet its public interest obligations.<sup>136</sup>

73. *Access to Spectrum.* If a Rural Digital Opportunity Fund applicant intends to use spectrum to offer voice and broadband services, we propose, consistent with the CAF Phase II auction, that the applicant indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it selected in each state.<sup>137</sup> We also propose that an applicant must disclose whether it currently holds licenses for or leases spectrum.<sup>138</sup> We propose the applicant must demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and meet the minimum performance

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<sup>128</sup> *Id.*

<sup>129</sup> 47 CFR §§ 1.2112(a), 54.315(a)(1).

<sup>130</sup> *Id.* § 1.21001(b)(3)-(4).

<sup>131</sup> This requirement is consistent with the agreement disclosure requirements for short-form applications to participate in our spectrum auctions. *See id.* § 1.2105(a)(2)(viii).

<sup>132</sup> *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1441-1442, paras. 32-35.

<sup>133</sup> 47 CFR § 54.315(a)(2).

<sup>134</sup> *See id.* § 54.315(a)(4).

<sup>135</sup> *See, e.g., Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.

<sup>136</sup> 47 CFR § 54.315(a)(4); *see Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1452, para. 64.

<sup>137</sup> *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1452, para. 64.

<sup>138</sup> 47 CFR § 54.315(a)(6); *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.



requirements to serve all of the fixed locations in eligible areas, and the applicant must certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization.<sup>139</sup>

74. *Operational History and Submission of Financial Documents.* Consistent with the CAF Phase II auction, we propose establishing two pathways for an applicant to demonstrate its operational experience and financial qualifications to participate in the Rural Digital Opportunity Fund auction.<sup>140</sup> With the first pathway, an applicant would certify, if applicable, in its short-form application that it (or its parent company if it is a wholly-owned subsidiary) has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline.<sup>141</sup> If the applicant certifies that it (or its parent company) has been providing voice and/or broadband service for at least two years, we propose requiring it to demonstrate that it has filed FCC Form 477s as required during the relevant time period.<sup>142</sup> If an applicant certifies that it (or its parent company) has been providing only electric distribution or transmission services for at least two years, we propose requiring it to submit qualified operating or financial reports that it or its parent company (if it is a wholly-owned subsidiary) filed with the relevant financial institution to demonstrate its two years of operational history along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution.<sup>143</sup> We expect that this information would provide the Commission with sufficient assurance before the auction that an entity has demonstrated that it has the ability to build and maintain a network.

75. As with the CAF Phase II auction, we propose that applicants that meet the foregoing requirements and that are audited in the ordinary course of business must also submit their (or their parent company's) financial statements from the prior fiscal year. These would include the balance sheets, income statements, and cash flow statements, that were audited by an independent certified public accountant, along with the audit opinion.<sup>144</sup> If an applicant (or its parent company) is not audited in the ordinary course of business and the applicant does not submit its audited financial statements with the short-form application, we propose requiring the applicant to certify that it will submit audited financial statements during the long-form application process and requiring such applicants to submit unaudited financial statements from the prior fiscal year with their short-form application.<sup>145</sup> We also propose that applicants that make such a certification and fail to submit the audited financial statements as required

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<sup>139</sup> *Id.*

<sup>140</sup> 47 CFR § 54.315(a)(7).

<sup>141</sup> *Id.* § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5982, para. 100; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1444, para. 41. An applicant would be deemed to have started providing a service on the date it began commercially offering that service to end users. *Id.* at 1444, para. 41.

<sup>142</sup> 47 CFR § 54.315(a)(7)(i)(A); *Phase II Auction Order*, 31 FCC Rcd at 5982, para. 100; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1444, para. 42.

<sup>143</sup> 47 CFR § 54.315(a)(7)(i)(B); *Phase II Auction Order*, 31 FCC Rcd at 5982-83, para. 100; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1444, para. 42. For CAF Phase II, the Commission accepted Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; the CoBank Form 7; or the functional replacement of one of these reports. *Phase II Auction Order*, 31 FCC Rcd at 5982-83, para. 100; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1444, para. 41.

<sup>144</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, paras. 102; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 43.

<sup>145</sup> 47 CFR § 54.315(a)(7)(i); *Phase II Auction Order*, 31 FCC Rcd at 5983-84, paras. 102-03; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 44.

would be subject to the same base forfeiture of \$50,000 that we adopted for the CAF Phase II auction.<sup>146</sup> As with the CAF Phase II auction, we expect that the additional cost of obtaining audited financial statements is outweighed by the importance of being able to assess the financial health of Rural Digital Opportunity Fund auction support recipients. We note the vast majority of CAF Phase II auction support recipients were able to obtain audited financial statements by the required deadlines.

76. If an applicant does not have at least two years of operational experience, consistent with the CAF Phase II auction, we propose requiring such applicants to submit with their short-form application their (or their parent company's) financial statements that were audited by an independent certified public accountant from the three prior fiscal years, including the balance sheets, income statement, and cash flow statements, along with a qualified opinion letter.<sup>147</sup> Such applicants would also be required to submit a letter of interest from a bank meeting the Commission's eligibility requirements stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is awarded support of a certain dollar magnitude.<sup>148</sup>

77. As with the CAF Phase II auction, we recognize that if we were to adopt these two pathways, we would potentially be precluding from participating in the auction interested bidders that have not been in operation long enough to meet these requirements or that are unable to meet these requirements for other reasons. However, these concerns are outweighed by our duties as the steward of universal service support. Commenters proposing alternative eligibility requirements should explain how their proposals would similarly further the Commission's responsibility to implement safeguards to ensure the public's funds are being provided to ETCs that have the requisite operational and financial qualifications and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder or long-form applicant defaults.

78. *Due diligence certification.* Consistent with the procedures adopted for the CAF Phase II auction, we propose requiring an applicant to certify that it has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund auction so the applicant understands its obligations in this regard.<sup>149</sup> Specifically, we propose that each applicant make the following certification in its short-form application under penalty of perjury:<sup>150</sup>

The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Rural Digital Opportunity Fund support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the Rural Digital Opportunity Fund obligations and the Commission's rules generally.

79. This proposed certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of default,<sup>151</sup> and that the applicant will

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<sup>146</sup> *Phase II Auction Order*, 31 FCC Rcd at 5984-85, paras. 104-05; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 44. Such forfeiture would be subject to the adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines. *Phase II Auction Order*, 31 FCC Rcd at 5984-85, para. 104.

<sup>147</sup> 47 CFR § 54.315(a)(7)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5985, paras. 106-07; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445, para. 45.

<sup>148</sup> 47 CFR § 54.315(a)(7)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5985-86, paras. 106, 108; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1445-46, para. 45.

<sup>149</sup> *See Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1472, para. 119.

<sup>150</sup> *See id.*

<sup>151</sup> *Id.*

not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties. We seek comment on this proposal.

80. *Changes to Short-Form Application.* Building on lessons learned from the CAF Phase II auction, we seek comment on whether to require less technical and financial information at the short-form stage from applicants that are existing providers. We propose to define an existing provider as an entity that has been offering a voice and/or broadband service for a certain period of time as demonstrated by its FCC Form 477 data.<sup>152</sup> If we were to adopt this approach, how long should an applicant be required to demonstrate that it has been filing FCC Form 477 data and would thus be considered an existing provider? Should a provider be required to demonstrate that it has submitted FCC Form 477 data that demonstrates it has offered both voice and broadband services for a certain period of time, or is it sufficient if the provider has offered only broadband services? Likewise, we seek comment on requiring less information at the short-form stage from applicants that qualified to participate in the CAF Phase II auction. Similarly, are there any eligibility restrictions that should be placed on CAF Phase II auction winning bidders that defaulted on their winning bids? Should we require such defaulters to submit additional information? Should we prohibit them from participating at all?

81. We seek to balance the burdens on applicants of completing a short-form application with the Commission's statutory obligation to protect the Fund, the integrity of the auction, and rural consumers. Commenters should consider what information the Commission can credibly rely on to evaluate an applicant's likeliness to perform without defaulting or to meet service milestones or service quality metrics. What presumptions can the Commission make from information that it already collects? To the extent commenters propose that we adopt fewer obligations for certain applicants than we have proposed here, they should also address whether the Commission needs to make any adjustments to its application process in general to account for the proposed changes, and why the requirement is unnecessary for the Commission to determine whether an applicant is qualified to bid.

## 2. Long-Form Application

82. After the Rural Digital Opportunity Fund auction concludes, we propose that each winning bidder submit a long-form application, which Commission staff will review to determine whether the winning bidder meets the eligibility requirements for receiving Rural Digital Opportunity Fund support and has the financial and technical qualifications to meet the obligations associated with such support.<sup>153</sup> Consistent with the CAF Phase II auction, in its long-form application, each Rural Digital Opportunity Fund winning bidder would be required to submit information about its qualifications, funding, and the network it intends to use to meet its obligations.<sup>154</sup> In addition, prior to being authorized to receive Rural Digital Opportunity Fund support, each winning bidder would demonstrate that it has been designated as an ETC in the area(s) for which it is a winning bidder and obtain a letter of credit from a bank meeting the Commission's eligibility requirements.<sup>155</sup> Similar to the CAF Phase II auction, we propose to adopt the rules in Appendix A that apply to the long-form application. We seek comment on these proposals and on whether any changes should be made to the long-form application process for the Rural Digital Opportunity Fund.

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<sup>152</sup> See generally, FCC, FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions (Dec. 5, 2016), Section 2, "Who Must File This Form?" at 5-8 (Dec. 5, 2016), <https://transition.fcc.gov/form477/477inst.pdf>.

<sup>153</sup> 47 CFR § 54.315(b).

<sup>154</sup> See 47 CFR § 54.315(b)(2).

<sup>155</sup> See 47 CFR § 54.1014(b)(5).

### 3. Auction Forfeiture

83. If a winning bidder is not authorized to receive Rural Digital Opportunity Fund support (e.g., the bidder fails to file or prosecute its long-form application or its long-form application is dismissed or denied), we propose the winning bidder would be in default and subject to the same forfeitures as CAF Phase II auction long-form applicants.<sup>156</sup>

### 4. Letters of Credit

84. We propose to adopt here the same letter of credit rules we adopted for the CAF Phase II auction. For the CAF Phase II auction, the Commission adopted a requirement that all long-form applicants obtain a letter of credit, explaining that letters of credit “are an effective means for accomplishing [the Commission’s] role as stewards of the public’s funds” because they “permit the Commission to immediately reclaim support” from support recipients that are not meeting their CAF Phase II auction obligations.<sup>157</sup> Before a CAF Phase II auction support recipient could receive its next year’s support and each year’s support thereafter, it had to modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year, subject to certain reductions when the support recipient has substantially met its service milestones.<sup>158</sup> If a CAF Phase II auction support recipient does not meet its service milestones or take advantage of the opportunities to cure or pay back the relevant support, the Commission will draw on the letter of credit.<sup>159</sup> A CAF Phase II auction support recipient must only maintain an open letter of credit until the recipient has certified it has met the final service milestone and the certification has been verified.<sup>160</sup>

85. We propose that a Rural Digital Opportunity Fund long-form applicant obtain an irrevocable stand-by letter of credit that must be issued in substantially the same form as set forth in the Commission’s *Phase II Auction Order* model letter of credit and that a long-form applicant submit a bankruptcy opinion letter from outside legal counsel.<sup>161</sup> We would also require that the letter of credit be issued by a bank that meets the same CAF Phase II auction bank eligibility requirements.<sup>162</sup> Before they can receive their next year’s support, Rural Digital Opportunity Fund support recipients would also be required to modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum of the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.<sup>163</sup>

86. We propose adopting the same phase-down schedule that was used in the CAF Phase II auction,<sup>164</sup> allowing the value of the letter of credit to decrease over time as a support recipient satisfies its minimum coverage and service requirements. For the CAF Phase II auction, once the auction recipient

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<sup>156</sup> 47 CFR § 1.21004; *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1520, para. 314; *Phase II Auction Order*, 31 FCC Rcd at 6000-01, paras. 143-45, para. 207.

<sup>157</sup> *Phase II Auction Order*, 31 FCC Rcd at 5990, 6045, paras. 119-21, Appx. B.

<sup>158</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, 5997, paras. 122, 135; *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1405, para. 64; *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136. Note that in accordance with the model letter of credit, annual letters of credit were required to contain an evergreen provision. *Phase II Auction Order*, 31 FCC Rcd at 6045-49, Appx. B.

<sup>159</sup> *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

<sup>160</sup> *Id.* at 5991, para. 123.

<sup>161</sup> 47 CFR § 54.315(c), (c)(3); *Phase II Auction Order*, 31 FCC Rcd at 5991-92, paras. 122, 125.

<sup>162</sup> 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5992-97, paras. 126-33.

<sup>163</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

<sup>164</sup> *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

has met its 60% service milestone, its letter of credit may be valued at 90% of the total support amount already disbursed plus the amount that will be disbursed in the coming year.<sup>165</sup> Once the auction recipient has met its 80% service milestone, its letter of credit may be valued at 60% of the total support amount already disbursed plus the amount that will be disbursed in the coming year.<sup>166</sup> We also propose that the letter of credit remain in place until USAC and the Commission verify that a Rural Digital Opportunity Fund recipient has met its minimum coverage and service requirements at the end of the six-year milestone. We seek comment on these proposals and on whether any adjustments should be made to the CAF Phase II auction letter of credit rules for the Rural Digital Opportunity Fund.

87. We also seek comment on whether we should make any changes to streamline the Commission and USAC's review and administration of letters of credit. For example, the CAF Phase II auction rules currently permit a long-form applicant to submit multiple letters of credit that cover all the bids in a state.<sup>167</sup> Should Rural Digital Opportunity Fund support recipients be required to submit one letter of credit that covers all the bids in a state to reduce the number of letters of credit that USAC and the Commission must review and track throughout the build-out period? We seek comment on these issues and on whether any other adjustments are appropriate, including adjustments to timing or the process for submitting letters of credit to USAC for review.

88. We seek comment on adopting the same letter of credit waiver opportunity for Tribal Nations or Tribally-owned and -controlled winning bidders.<sup>168</sup> Specifically, should we permit any Tribal Nation or Tribally-owned and -controlled long-form applicant that is unable to obtain a letter of credit to file a petition for waiver of the letter of credit requirement using the same standard we adopted for the CAF Phase II auction?<sup>169</sup> What alternative could we use to secure the federal funding going to these support recipients in the event of non-performance or default? We note that a number of Tribally-owned and -controlled winning bidders were able to obtain letters of credit for the CAF Phase II auction.

89. Finally, the CAF Phase II auction provides a basis for lessons learned that can inform the letter of credit requirements in the Rural Digital Opportunity Fund. We observed in the CAF Phase II auction process that companies with existing lending relationships often use letters of credit in the normal course of operating their businesses and, generally, are able to maintain multiple forms of financing for varying purposes.<sup>170</sup> On the other hand, we also found that winning bidders complained of the high cost

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<sup>165</sup> 47 CFR § 54.315(c)(1)(i); *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

<sup>166</sup> 47 CFR § 54.315(c)(1)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5997-98, paras. 136-37; *Phase II Auction Order on Reconsideration*, 33 FCC Rcd at 1405-06, para. 64.

<sup>167</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122. For the CAF Phase II auction, if an applicant obtained multiple letters of credit for a state and defaulted, the Bureaus would authorize a draw on all letters of credit covering all of the bids in the state. *Id.* at 5991, para. 122 & n.242.

<sup>168</sup> *See Phase II Auction Order*, 31 FCC Rcd at 5999, para. 140.

<sup>169</sup> For the CAF Phase II auction, a Tribal waiver applicant had to show, it was unable to obtain a letter of credit because of limitations on the ability to collateralize its real estate, and that that CAF Phase II support would be used for its intended purposes, and that the funding would be used in the best interests of the Tribal Nation and would not be wasted. *See Phase II Auction Order*, 31 FCC Rcd at 5999, para. 140. Tribally-owned long-form applicants are defined to include (1) Tribes which are federally recognized American Indian Tribes and Alaska Native Villages; (2) consortia of Tribes; and (3) entities that are more than 50% owned and controlled by a Tribe or Tribes. *Id.* at 5999, para. 140 & n.295.

<sup>170</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, para. 446 (noting in the context of MF-I that "companies who have existing lenders regularly use [letters of credit] in the normal course of operating their businesses and are able to maintain multiple forms of financing, thus, we give little credence to the suggestion that this requirement could fatally impair a company's ability to obtain private or public market funding"); *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788-89, paras. 56-57 (continuing to view letters of credit as beneficial and noting that "our experience has shown that winning bidders are able to obtain [letters of credit]"); *see also Phase II Auction Order*,

(continued....)

of obtaining and maintaining a letter of credit, such that it would “consume too much of the limited capital available to . . . [and] leave [in]sufficient funds for . . . [CAF Phase II auction] construction.”<sup>171</sup> We therefore seek comment on whether we should decline to require a letter of credit for the Rural Digital Opportunity Fund. Are there viable, less costly alternatives that still minimize risk to public funds?

### 5. Eligible Telecommunications Carrier Designations

90. We propose to adopt the same ETC designation procedures for the Rural Digital Opportunity Fund that the Commission adopted for the CAF Phase II auction. Only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (the Act) are eligible to receive support from the high-cost program.<sup>172</sup> For the CAF Phase II auction, the Commission did not require that service providers become ETCs to apply to participate and then bid in the auction. However, all long-form applicants were required to obtain an ETC designation that covers all of the areas where they won support prior to being authorized to receive support.<sup>173</sup> Similarly, we propose that service providers that want to apply to bid in the Rural Digital Opportunity Fund auction would not be required to be ETCs, but that long-form applicants would be required, within 180 days of the release of the public notice announcing winning bidders, to obtain an ETC designation from the relevant state commission, or this Commission if the state commission lacks jurisdiction, that covers the areas where they won support.<sup>174</sup>

91. As in the CAF Phase II auction, we expect that allowing service providers that are not ETCs (such as electric utilities) to apply to bid in the auction will encourage participation from service providers that may be hesitant to invest resources in applying for an ETC designation without knowing if they would be likely to win Rural Digital Opportunity Fund support. We also propose that the Bureau waive the deadline where long-form applicants demonstrate good faith efforts to obtain their ETC designations, but the proceeding is not complete by the deadline.<sup>175</sup> Good faith would be presumed if the long-form applicant filed its ETC application with the relevant authority within 30 days of the release of the public notice announcing winning bidders.<sup>176</sup>

92. We also propose to forbear from the statutory requirement that the ETC service area of a Rural Digital Opportunity Fund participant conform to the service area of the rural telephone company serving the same area.<sup>177</sup> As in the CAF Phase II auction, the Commission will be maximizing the use of Rural Digital Opportunity Fund support by making it available for only one provider per geographic

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31 FCC Rcd at 5990, para. 120 (agreeing with the rationale in the *USF/ICC Transformation Order* that letters of credit are effective).

<sup>171</sup> Petition for Limited Waiver, WC Docket Nos. 10-90, 14-58 (filed Nov. 8, 2018) (Allen’s T.V. Cable Service, Inc. Petition).

<sup>172</sup> 47 U.S.C. § 214(e)(1).

<sup>173</sup> 47 CFR § 54.310(e)(1); *April 2014 Connect America Order*, 29 FCC Rcd at 7064, para. 43.

<sup>174</sup> We note that the vast majority of CAF Phase II auction long-form applicants were able to obtain ETC designations by the 180-day deadline.

<sup>175</sup> *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53 & n.315.

<sup>176</sup> *Id.* at 6003, para. 153.

<sup>177</sup> *Id.* at 6005-09, paras. 157-68. The Act and the Commission’s rules define the term “service area” as a geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); *see also* 47 CFR § 54.207(a). Section 214(e)(5) of the Act requires that a competitive ETC’s service area must conform to the incumbent rural telephone company’s service area “unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company.” 47 U.S.C. § 214(e)(5).

area.<sup>178</sup> Moreover, we expect that the incumbent rural telephone company's service area will no longer be relevant because the incumbent service provider may be replaced by another Rural Digital Opportunity Fund recipient in portions of its service area.

93. We seek comment on these proposals and on whether any changes should be made to the ETC designation procedures for the Rural Digital Opportunity Fund.

### **I. Transitions**

94. In this section, we seek comment on two transitions that may occur as a result of the Rural Digital Opportunity Fund. First, we examine how to transition incumbent price cap carriers from legacy high-cost support in areas where Rural Digital Opportunity Fund support is awarded. Second, we examine how to transition price cap carriers from CAF Phase II model-based support in areas where Rural Digital Opportunity Fund support is awarded.

#### **1. Legacy Support Transition Period**

95. To begin the process of transitioning legacy high-cost support to the CAF, the Commission implemented CAF Phase I by freezing support for price cap carriers under then-existing high-cost support mechanisms (legacy support)<sup>179</sup> and decided that this frozen support would transition to CAF Phase II support upon completion of the CAF Phase II auction.<sup>180</sup> To implement this transition, the Commission adopted a methodology for disaggregating the frozen support in states where price cap carriers declined model-based support and allocated a portion of each incumbent price cap carrier's existing frozen support to each CAF Phase II auction-eligible census block in the declined state based on the relative costs of providing service across all auction-eligible census blocks within the same state.<sup>181</sup> Incumbent price cap carriers were given the option of declining this support on state-by-state basis.<sup>182</sup>

96. In areas where an incumbent price cap carrier receiving disaggregated legacy support is the long-form applicant that is authorized to receive CAF Phase II auction support, the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the price cap carrier is authorized to receive CAF Phase II auction support in that area.<sup>183</sup> Similarly, in areas won in the CAF Phase II auction by a carrier other than the incumbent price cap carrier, the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the long-form applicant is authorized to receive CAF Phase II auction support in that area.<sup>184</sup> In areas where the

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<sup>178</sup> *Phase II Auction Order*, 31 FCC Rcd at 6006, para. 159.

<sup>179</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17712-13, paras. 128-29. The Commission froze, effective January 1, 2012, all support for price cap carriers and their rate-of-return affiliates, which carriers received pending CAF Phase II. *Id.* at 17715, para. 133.

<sup>180</sup> *Id.* at 17733, para. 180.

<sup>181</sup> *Connect America Fund et al.*, WC Docket No. 10-90, Report and Order, FCC 19-8, at 3-4, paras. 9-10 (Feb. 15, 2019) (*Phase II Transitions Order*). Allocated monthly support for any census block was limited to \$146.10 per location. *Id.* at 4, para. 9.

<sup>182</sup> *Id.* at 10, para. 24.

<sup>183</sup> *Id.* at 5, para. 14.

<sup>184</sup> *Id.* at 6, para. 15. Price cap carriers that serve the census blocks where a CAF Phase II auction recipient that is not the incumbent price cap carrier has been authorized to receive support no longer have a federal high-cost ETC obligation to continue to offer voice service in those census blocks pursuant to the forbearance granted in 2014. *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15663-71, paras. 50-70; *see also* 47 CFR § 54.201(d)(3). In the first month that support is disbursed to an authorized CAF Phase II auction support recipient that is not the incumbent price cap carrier, the incumbent price cap carrier is immediately relieved of its federal high-cost ETC obligation to offer voice telephony in those specific census blocks. *December 2014 Connect America Fund Order*, 29 FCC Rcd at 15670, para. 69.

incumbent price cap carrier receives disaggregated legacy support and there was no authorized long-form applicant, the incumbent price cap carrier will continue to receive such support until the Commission takes further action.<sup>185</sup> Finally, in all census blocks determined to be ineligible for the CAF Phase II auction, price cap carriers that declined CAF Phase II model-based support ceased receiving legacy support starting the first day of the month following the first authorization of CAF Phase II auction support nationwide.<sup>186</sup>

97. We propose to adopt a similar transition period for the Rural Digital Opportunity Fund for incumbent price cap carriers that are receiving disaggregated legacy support. We propose that an incumbent price cap carrier currently receiving disaggregated legacy support will no longer receive such support in any census block that is deemed ineligible for the Rural Digital Opportunity Fund. This approach is consistent with our decision to stop providing legacy support in areas deemed ineligible for the CAF Phase II auction because by excluding those areas from the auction, the Commission had already determined not to offer ongoing high-cost support for those areas.<sup>187</sup> For the Rural Digital Opportunity Fund, we propose ceasing such support in the first day of the month after the final Rural Digital Opportunity Fund eligible areas list is released. Although we waited until the first CAF Phase II auction recipient was authorized to stop providing legacy support in areas deemed ineligible for the CAF Phase II auction, the Commission had not yet adopted a methodology for transitioning from legacy support to CAF Phase II auction support when WCB released the final CAF Phase II auction eligible areas list and there is no reason to continue paying a carrier through the Rural Digital Opportunity Fund auction if the Commission has already determined an area is ineligible for support.<sup>188</sup>

98. In areas where an incumbent price cap carrier is receiving disaggregated legacy support and it becomes the authorized Rural Digital Opportunity Fund recipient, we propose that the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the price cap carrier is authorized to receive Rural Digital Opportunity Fund support. Similarly, in areas where an incumbent price cap carrier is receiving disaggregated legacy support and another long-form applicant is authorized to receive Rural Digital Opportunity Fund support, we propose that the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after that long-form applicant is authorized to receive Rural Digital Opportunity Fund support. Finally, if no long-form applicant is authorized to receive Rural Digital Opportunity Fund support in an area, we propose that the incumbent price cap carrier receiving disaggregated support in that area would continue to receive such support until further Commission action.

99. We seek comment on these proposals and on whether any adjustments should be made for the transition from disaggregated legacy support to Rural Digital Opportunity Fund support.

## 2. CAF Phase II Model-Based Support Transition Period

100. In the *December 2014 Connect America Order*, the Commission adopted a transition period for price cap carriers that accepted CAF Phase II model-based support. If a price cap carrier was a winning bidder in the subsequent auction, it would commence receiving the auction support in 2021, after the model-based support term ended at the end of 2020.<sup>189</sup> If the price cap carrier did not win in the

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<sup>185</sup> *Phase II Transitions Order* at 5, para. 13.

<sup>186</sup> *Id.* at 6, para. 16. See *Connect America Fund Phase II Auction Support Authorized for 459 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 19-414, at 7 (WCB May 14, 2019).

<sup>187</sup> *Phase II Transitions Order* at 6, para. 16.

<sup>188</sup> The final eligible areas list was released on February 6, 2018. *Final Eligible Census Block List Public Notice*, 33 FCC Rcd 1166. The Commission adopted a methodology for transitioning from legacy support to CAF Phase II auction support on February 14, 2019. See *Phase II Transitions Order*, FCC 19-8.

<sup>189</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15656, para. 32.



auction or chose not to bid, it would have the option of electing one additional year of support, with CAF Phase II model-based support continuing in calendar 2021.<sup>190</sup>

101. Given that a Rural Digital Opportunity Fund auction is unlikely to conclude before model-based support for price cap carriers is expected to end, we seek comment on whether to revisit the transition period from CAF Phase II model-based support to Rural Digital Opportunity Fund support. As a threshold matter, we seek comment on which price cap carriers should be eligible for the optional seventh year of support. The optional support year was only to be made available to price cap carriers that did not bid or did not win support in the subsequent auction.<sup>191</sup> But by the end of 2020, we may not know which price cap carriers fall in these categories. Should all price cap carriers have the option to elect an additional year of support or should the option only be available to a subset of price cap carriers? If the option should only be available to a subset of price cap carriers, what criteria should we use to determine which price cap carriers should have the option of electing one more year of support?

102. The Commission emphasized the “limited scope and duration” of the CAF Phase II offer of model-based support.<sup>192</sup> Price cap carriers had no expectation of receiving ongoing support beyond the additional optional year in these areas once the CAF Phase II support term had ended because the Commission expected that it would have conducted the subsequent auction before the support term had ended. Price cap carriers were provided the option of receiving six years of support, with an optional seventh year, in exchange for fulfilling specific service obligations which each price cap carrier had the opportunity to evaluate and accept or decline. Price cap carriers were also on notice that other service providers could win support to serve these areas in the subsequent auction so that ongoing support would not be made available once the optional year had ended.<sup>193</sup> Because price cap carriers accepted CAF Phase II model-based support without an expectation of sustained ongoing support, we do not believe it is necessary to provide any transitional support to price cap carriers beyond the optional seventh year of support. We seek comment on this view.

103. Given the potential time period between the end of the CAF Phase II model-based support term and the authorization of Rural Digital Opportunity Fund support recipients, how should we adjust the offer of an optional seventh year of support? Should it be available to all price cap carriers until the completion of the Rural Digital Opportunity Fund Phase I auction? Should it be available only until a specific time (e.g., June 30, 2021) with the remaining six months available only to price cap carriers that are not support recipients in the Phase I auction? Is a full year of support in 2021 appropriate or should we reduce the support to some lesser amount? Are there any additional obligations that are in the public interest that price cap carriers should also be subject to as a condition of receiving the extra year of 2021 support?

104. We also seek comment on whether there are any other issues that we should address in the context of this proceeding that will facilitate the transition from CAF Phase II model-based support to Rural Digital Opportunity Fund support and will ensure that consumers retain access to voice and broadband services that are reasonably comparable to those offered in urban areas.<sup>194</sup>

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<sup>190</sup> *Id.* at 15656-57, para. 32. In 2011, the Commission also indicated that if a competitive bidding mechanism had not been implemented by the end of CAF Phase II model-based support term, the incumbent price cap carriers receiving such support would “be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17726-27, para. 163.

<sup>191</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15656-57, para. 32.

<sup>192</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17732, para. 178.

<sup>193</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15656-57, para. 32.

<sup>194</sup> USTelecom July 24, 2019 *Ex Parte* Letter at 2-3.

#### IV. PROCEDURAL MATTERS

105. *Paperwork Reduction Act Analysis.* This document contains proposed new information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

106. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,<sup>195</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.<sup>196</sup>

107. *Ex Parte Presentations- Permit-But-Disclose.* The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>197</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

108. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.<sup>198</sup> Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.<sup>199</sup> However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from disclosure in permit-but-disclose proceedings<sup>200</sup> and exempt from the prohibitions during the Sunshine Agenda period.<sup>201</sup> To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

109. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments

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<sup>195</sup> 5 U.S.C. § 603.

<sup>196</sup> 5 U.S.C. § 603(a).

<sup>197</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>198</sup> *See id.* § 1.1200(a).

<sup>199</sup> 5 U.S.C. §§ 551 *et seq.*

<sup>200</sup> *See generally* 47 CFR § 1.1206.

<sup>201</sup> *See id.* § 1.1203.

already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

110. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

111. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

112. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

## V. ORDERING CLAUSES

113. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214,

254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412, this Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

114. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

115. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

APPENDIX A
Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 54 to read as follows:

PART 54- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.313 to revise paragraph (e) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

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(e) In addition to the information and certifications in paragraph (a) of this section, the following requirements apply to Connect America Phase II and Rural Digital Opportunity Fund recipients:

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(2) Any recipient of Connect America Phase II or Rural Digital Opportunity Fund support awarded through a competitive bidding process shall provide:

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(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) or § 54.802(c) of this chapter until the July 1st after the Connect America Phase II recipient's or Rural Digital Opportunity Fund recipient's support term has ended, a certification that the Connect America Phase II-funded network that the Connect America Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Rural Digital Opportunity Fund recipient operated in the prior year meets the relevant performance requirements for the Rural Digital Opportunity Fund.

\*\*\*\*\*

3. Amend § 54.316 to revise paragraph (a) and (b) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) \*\*\*

\*\*\*\*\*

(4) Recipients subject to the requirements of § 54.310(c) or § 54.802(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Connect America Phase II auction support and Rural Digital Opportunity Fund support shall also report the technology they use to serve those locations.

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(b) \*\*\*

(5) Recipients of Rural Digital Opportunity Fund support shall provide: By the last business day of the second calendar month following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

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4. Revise subpart J to part 54 to read as follows:

**Subpart J- Rural Digital Opportunity Fund**

**§ 54.801 Use of competitive bidding for Rural Digital Opportunity Fund.**

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Rural Digital Opportunity Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

**§ 54.802 Rural Digital Opportunity Fund geographic areas, deployment obligations, and support disbursements.**

(a) Geographic areas eligible for support. Rural Digital Opportunity Fund support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Term of support. Rural Digital Opportunity Fund support shall be provided for ten years.

(c) Deployment obligation.

(1) Recipients of Rural Digital Opportunity Fund support must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year. Compliance shall be determined based on the total number of supported locations in a state.

(2) Recipients of Rural Digital Opportunity Fund support may elect to deploy to 95 percent of the number of supported locations in a given state with a corresponding reduction in support computed based on the average support per location in the state times 1.89.

(d) Disbursement of Rural Digital Opportunity Fund funding. An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.

**§ 54.803 Rural Digital Opportunity Fund provider eligibility.**

(a) Any eligible telecommunications carrier is eligible to receive Rural Digital Opportunity Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Rural Digital Opportunity Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Rural Digital Opportunity Fund support, its designation as an eligible telecommunications carrier may be conditioned subject to receipt of Rural Digital Opportunity Fund support.

**§ 54.804 Rural Digital Opportunity Fund application process.**

(a) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Rural Digital Opportunity Fund support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations established for Rural Digital Opportunity Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support;

(7) Submit operational and financial information.

(i) If applicable, the applicant should submit a certification that it has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (a)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (c)(2) of this section, that the bank would provide a letter of credit as described in paragraph (c) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(8) Certify that the applicant has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund.

(b) Application by winning bidders for Rural Digital Opportunity Fund support—

(1) Deadline. As provided by public notice, winning bidders for Rural Digital Opportunity Fund support or their assignees shall file an application for Rural Digital Opportunity Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) Application contents. An application for Rural Digital Opportunity Fund support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Rural Digital Opportunity Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Rural Digital Opportunity Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the long-form applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (c) of this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the long-form applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than the number of days provided by public notice, if a long-form applicant or a related entity did not submit audited financial statements in the relevant short-form application as required, the long-form applicant must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the long-form applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) Application processing.

(i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each long-form applicant that may be authorized to receive Rural Digital Opportunity Fund support after the



long-form applicant submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such long-form applicant shall submit a letter of credit and accompanying opinion letter as required by paragraph (c) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each long-form applicant that is authorized to receive Rural Digital Opportunity Fund support.

(c) Letter of credit. Before being authorized to receive Rural Digital Opportunity Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Value. Each recipient authorized to receive Rural Digital Opportunity Fund support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Rural Digital Opportunity Fund support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.802(c).

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank:

(A) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A long-form applicant for Rural Digital Opportunity Fund support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(4) Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Rural Digital Opportunity Fund support recipient to meet its service milestones as required by § 54.802 will trigger reporting obligations and the withholding of support as described in § 54.320(d). Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Rural Digital Opportunity Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Rural Digital Opportunity Fund support recipient from the receipt of Rural Digital Opportunity Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

**§ 54.805 Rural Digital Opportunity Fund public interest obligations.**

(a) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service meeting the performance standards for the relevant performance tier.

(1) Winning bidders meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, and announced annually by public notice issued by the Wireline Competition Bureau over the 10-year term.

(2) Winning bidders meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and offer at least 2 terabytes of monthly usage.

(3) Winning bidders meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer at least 2 terabytes of monthly usage.

(4) For each of the tiers in paragraphs (b)(1) through (3) of this section, bidders are required to meet one of two latency performance levels:

(i) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(ii) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

(c) Recipients of Rural Digital Opportunity Fund support are required to bid on category one telecommunications and Internet access services in response to a posted FCC Form 470 seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Rural Digital Opportunity Fund support. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

**§ 54.806 Rural Digital Opportunity Fund reporting obligations, compliance, and recordkeeping.**

(a) Recipients of Rural Digital Opportunity Fund support shall be subject to the reporting obligations set forth in § 54.313, § 54.314, and § 54.316.

(b) Recipients of Rural Digital Opportunity Fund support shall be subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in § 54.320.

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments for the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Broadband access is critical to economic opportunity, job creation, education and civic engagement. That is why closing the digital divide is the Commission's top priority. For communities throughout our nation to thrive and prosper, their residents must have the option to obtain high-speed Internet access.

3. Last year, the Commission took a major step forward in expanding broadband access to many parts of rural America. As a result of our successful Connect America Fund (CAF) Phase II auction, the Commission has begun providing \$1.488 billion in universal service support over ten years to build high-speed broadband service to over 700,000 households and small businesses in 45 states, with 99.75% of locations receiving at least 25/3 Mbps service and more than half receiving at least 100/20 Mbps service.

4. But more work remains to be done. For example, more than 10 million households and small businesses in price cap areas still lack access to critical broadband services that offer speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream in unserved census blocks, including more than 7 million in rural areas.<sup>4</sup> So today, the Commission proposes to build on the success of the CAF Phase II auction by establishing the Rural Digital Opportunity Fund, which will commit at least \$20.4 billion over the next decade to support high-speed broadband networks in rural America. Because the CAF Phase II auction secured higher quality services for consumers at a lower cost to the Universal Service Fund (Fund), we propose to conduct a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition. And in light of the need to bring service both to consumers in wholly unserved areas as well as those living in partially served areas, we propose to assign funding in two phases: Phase I will target those areas that current data confirms are wholly unserved, and Phase II will target those areas that are partially served as well as any areas not won in the first phase. By relying on a two-phase process, as the Commission did with the Connect America Fund, we can move expeditiously to commence an auction in 2020 while also ensuring that other areas are not left behind by holding a second auction.

5. The framework we propose today represents the Commission's single biggest step yet to close the rural digital divide and will connect millions more rural homes and small businesses to high-speed broadband networks.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Staff analysis of Connect America Cost Model and December 2017 FCC Form 477 data (v.2) (includes revisions through Mar. 26, 2019), available at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>.

**B. Legal Basis**

6. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.<sup>7</sup> A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup>

**1. Total Small Entities**

8. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>9</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>10</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>11</sup>

9. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>12</sup> Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>13</sup>

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<sup>5</sup> See 5 U.S.C. § 603(b)(3).

<sup>6</sup> See *id.* § 601(6).

<sup>7</sup> See *id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>8</sup> See 15 U.S.C. § 632.

<sup>9</sup> See 5 U.S.C. § 601(3)-(6).

<sup>10</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>11</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>12</sup> 5 U.S.C. § 601(4).

<sup>13</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784

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10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>15</sup> indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were 37, 132 General purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>19</sup> and special districts<sup>20</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.<sup>21</sup> Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>22</sup>

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nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

<sup>16</sup> See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States., <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

<sup>17</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

<sup>18</sup> See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

<sup>19</sup> See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

<sup>20</sup> See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

<sup>21</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

<sup>22</sup> *Id.*

## 2. Wireline Providers

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>23</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>24</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>25</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of that total, 3,083 operated with fewer than 1,000 employees.<sup>28</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

13. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>29</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>30</sup> U.S. Census Bureau data indicate that 3,117 firms operated the entire year.<sup>31</sup> Of this total, 3,083 operated with fewer than 1,000

<sup>23</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>24</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>26</sup> *Id.*

<sup>27</sup> See *id.* § 121.201. The Wired Telecommunications Carrier category formerly used NAICS code 517110. As of 2017 the U.S. Census Bureau definition shows NAICS code 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>28</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>29</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>30</sup> *Id.*

<sup>31</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

employees.<sup>32</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>33</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>34</sup> Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

14. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>35</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>36</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

15. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>37</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>38</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers.<sup>39</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or

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<sup>32</sup> *Id.*

<sup>33</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>34</sup> *Id.*

<sup>35</sup> 13 CFR § 121.201 (NAICS Code 517311).

<sup>36</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>37</sup> 5 U.S.C. § 601(3).

<sup>38</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

<sup>39</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017, the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired

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fewer employees.<sup>40</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>41</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>42</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>43</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>44</sup> Consequently, the Commission estimates that the majority of interexchange service providers that may be affected are small entities.

17. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>45</sup> According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>46</sup> Consequently, the Commission estimates that the majority of OSPs are small entities.

18. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>47</sup> According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>48</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>49</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

19. *Local Resellers*. The SBA has developed a small business size standard for Telecommunications Resellers which includes Local Resellers.<sup>50</sup> The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.<sup>51</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual

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Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>40</sup> *Id.*

<sup>41</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>42</sup> *Id.*

<sup>43</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>44</sup> *Id.*

<sup>45</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>46</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>47</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>48</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>49</sup> See *id.*

<sup>50</sup> See 13 CFR § 121.201; NAICS Code 517911.

<sup>51</sup> U.S. Census Bureau, 2012 NAICS Definition, NAICS Code 517911 “Telecommunications Resellers,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2017+NAICS+Search&search=2017>.

network operators (MVNOs) are included in this industry.<sup>52</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>53</sup> U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.<sup>54</sup> Of that number, all operated with fewer than 1,000 employees.<sup>55</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>56</sup> Of these, an estimated 211 have 1,500 or fewer employees.<sup>57</sup> Consequently, the Commission estimates that the majority of Local Resellers are small entities.

20. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers which includes toll resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>58</sup> According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>59</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>60</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

21. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>61</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>62</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>63</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>64</sup> Consequently, the Commission estimates that most Other Toll Carriers are small.

22. *800 and 800-Like Service Subscribers.*<sup>65</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers.

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<sup>52</sup> *Id.*

<sup>53</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>54</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517911 Telecommunications Resellers), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517911](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911).

<sup>55</sup> *Id.*

<sup>56</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>57</sup> *Id.*

<sup>58</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>59</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>60</sup> See *id.*

<sup>61</sup> See 13 CFR § 121.201, NAICS code 517311.

<sup>62</sup> See [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>63</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>64</sup> See *id.*

<sup>65</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>66</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>67</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>68</sup> We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

### 3. Wireless Providers (Except Satellite)

23. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>69</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>70</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>71</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>72</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

24. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions.<sup>73</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony

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<sup>66</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>67</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>68</sup> See *id.*

<sup>69</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Carriers (Except Satellite),” See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

<sup>70</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>71</sup> U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>72</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>73</sup> See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

services.<sup>74</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>75</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

25. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>76</sup> The SBA has approved these definitions.<sup>77</sup>

26. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).<sup>78</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>79</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>80</sup> Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.<sup>81</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>82</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>83</sup> Therefore, more than half of these entities can be considered small.

#### 4. Broadband Internet Access Service Providers

27. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies.

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<sup>74</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>75</sup> See *id.*

<sup>76</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>77</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

<sup>78</sup> U.S. Census Bureau, 2012 NAICS Definitions, 517210 Wireless Telecommunications Carriers (Except Satellite), <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012+NAICS+Search>.

<sup>79</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>80</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>81</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>82</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>83</sup> *Id.*

Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>84</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>85</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>86</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>87</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

28. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

#### 5. Satellite Telecommunications

29. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>88</sup> Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.<sup>89</sup> For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>90</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>91</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

#### 6. Electric Power Generators, Transmitters, and Distributors

30. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of “establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the

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<sup>84</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See U.S. Census Bureau, *2017 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>85</sup> See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

<sup>86</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>87</sup> *Id.*

<sup>88</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications”; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

<sup>89</sup> 13 CFR § 121.201, NAICS code 517410.

<sup>90</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517410 [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~517410](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517410).

<sup>91</sup> *Id.*

following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”<sup>92</sup> The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”<sup>93</sup> Census Bureau data for 2012 show that there were 1,1635 firms that operated for the entire year in this category.<sup>94</sup> Of these firms, 63 had 1,000 employees or more, and 1,572 had fewer than 1,000 employees.<sup>95</sup> Based on this data, a majority of these firms can be considered small.

## 7. All Other Telecommunications

31. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>96</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>97</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>98</sup> The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less.<sup>99</sup> For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.<sup>100</sup> Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.<sup>101</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. In the Notice we begin the process of seeking comment on rules that will apply in the Rural Digital Opportunity Fund auction. We propose establishing three technology-neutral tiers of bids available for bidding with varying broadband speed and usage allowances, and for each tier propose

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<sup>92</sup> U.S. Census Bureau, 2012 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution,” <https://www.census.gov/econ/isp/sampler.php?naicscode=2211&naicslevel=4#> (last visited Aug.31, 2018).

<sup>93</sup> 13 CFR § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

<sup>94</sup> See U.S. Census Bureau, American FactFinder, Utilities: Subject Series - Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 2012, NAICS code 221122, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/22SSSZ5//naics~2211](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/22SSSZ5//naics~2211) (last visited Aug. 31, 2018).

<sup>95</sup> See *id.*

<sup>96</sup> See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See 13 CFR § 121.201, NAICS code 517919.

<sup>100</sup> U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~517919](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919).

<sup>101</sup> *Id.*

differentiating between bids that would offer either lower or higher latency. Like all high-cost ETCs, we propose that Rural Digital Opportunity Fund support recipients would be required to offer standalone voice service and offer voice and broadband services meeting the relevant performance requirements at rates that are reasonably comparable to rates offered in urban areas. We also propose that Rural Digital Opportunity Fund support recipients will be subject to the same uniform framework for measuring speed and latency performance along with the accompanying compliance framework as all other recipients of high-cost support required to serve fixed locations.

33. We also propose adopting a 10-year support term for Rural Digital Opportunity Fund support recipients along with interim service milestones by which support recipients must offer the required voice and broadband service to a required number of locations. We seek comment on whether the Commission should adopt additional performance requirements to provide incentive for Rural Digital Opportunity Fund support recipients to pursue customers in eligible areas.

34. For entities that are interested in participating in the Rural Digital Opportunity Fund, we propose adopting a two-step application process and seek comment on whether any adjustments should be made or if the application process should be streamlined for certain entities. We propose requiring applicants to submit a pre-auction short-form application that includes information regarding their ownership, technical and financial qualifications, the technologies they intend to use and the types of bids they intend to place, their operational history, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

35. We also propose requiring winning bidders to submit a long-form application in which they will submit information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application period, we also propose requiring long-form applicants to obtain an ETC designation from the state or the Commission as relevant that covers the eligible areas in their winning bids. Prior to being authorized to receive support, we propose requiring long-form applicants to obtain an irrevocable stand-by letter of credit that meets our requirements from an eligible bank along with a bankruptcy opinion letter. The letter of credit would cover the support that has been disbursed and that will be disbursed in the coming year, subject to modest adjustments as support recipients substantially build out their networks, until the Commission and Universal Service Administrative Company verify that the applicant has met its service milestones. We seek comment on whether the Commission should use alternative measures to protect disbursed funds. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. We propose subjecting winning bidders or long-form applicants that default during the long-form application process to forfeiture.

36. To monitor the use of Rural Digital Opportunity Fund support to ensure that it is being used for its intended purposes, we propose to require support recipients to file location and technology data on an annual basis in the online High Cost Universal Broadband (HUBB) portal and to make certifications when they have met their service milestones. We also propose requiring applicants to file certain information in their annual FCC Form 481 reports including information regarding the community anchor institutions they serve, the support they used for capital expenditures, and certifications regarding meeting the Commission's performance obligations and available funds. Support recipients would also be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as other high-cost ETCs. We seek comment on whether any adjustments should be made to this reporting framework.

37. For support recipients that do not meet their Rural Digital Opportunity Fund obligations, we propose subjecting such support recipients to the framework for support reductions that is applicable to all high-cost ETCs that are required to meet defined service milestones and to the process the Commission adopted for drawing on letters of credit for the Connect America Fund (CAF) Phase II auction. We seek comment on alternatives to this proposal.

38. We also seek comment on substantive proposals to address the impediments to broadband deployment that have resulted in a Tribal digital divide.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered**

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>102</sup> We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

40. We seek comment on a number of issues to ensure that small entities have the opportunity to participate in the Rural Digital Opportunity Fund auction. For example, we propose to adopt different performance standards for bidders to maximize the types of entities that can participate in the Rural Digital Opportunity Fund auction.

41. Based on lessons learned from the CAF Phase II auction, we also seek comment on a two-step application process that will allow entities interested in bidding to submit a short-form application to be qualified in the auction that we found to be an appropriate but not burdensome screen to ensure participation by qualified providers, including small entities. Only if an applicant becomes a winning bidder would it be required to submit a long-form application which requires a more fulsome review of an applicant's qualifications to be authorized to receive support. Like the CAF Phase II auction, we propose providing two pathways for eligibility for the auction—both 1) for entities that have at least two years' experience providing a voice, broadband, and/or electric transmission or distribution service, and 2) for entities that have at least three years of audited financials and can obtain an acceptable letter of interest from an eligible bank. We expect that by proposing to adopt two pathways for eligibility and to permit experienced entities that do not audit their financial statements in the ordinary course of business to wait to submit audited financials until after they are announced as winning bidders, more small entities will be able to participate in the auction. We also seek comment on whether we should take measures to collect less information during the application process from certain experienced entities or entities that qualified for the CAF Phase II auction, which may also include small entities.

42. We also propose permitting all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction. Recognizing that some CAF Phase II auction participants, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, we also seek comment on whether there are viable, less costly alternatives that still minimize risk to public funds.

43. We invite comment from all parties, including small entities and participants in the CAF Phase II auction, on adopting for the Rural Digital Opportunity Fund generally the same service milestones, reporting obligations, and non-compliance measures that we adopted for CAF Phase II. We seek to learn from the experience of small entities so that we can balance our responsibility to monitor the use of universal service funds with minimizing administrative burdens on Rural Digital Opportunity Fund participants.

44. Additionally, we seek comment on potential measures for incentivizing carriers, including small entities, to bid on and serve Tribal lands. These measures include implementing a Tribal

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<sup>102</sup> 5 U.S.C. § 603(c).



Broadband Factor that accounts for the unique challenges of deploying broadband to rural Tribal communities and a Tribal bidding credit.

45. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

46. None

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket No. 10-90.*

This past April, I first announced my vision for the Rural Digital Opportunity Fund in the White House's Roosevelt Room, alongside the President of the United States. It was a fitting setting for announcing the FCC's single biggest step yet to close the digital divide, our top priority. Today, I'm pleased that the Commission is taking the first step toward executing that vision and bringing the Rural Digital Opportunity Fund—and broadband connectivity for millions of unserved Americans—to fruition.

This past May, I saw a glimpse of the exciting future ahead for consumers in the areas that will be connected through this new Fund. I visited the town of Okmulgee, Oklahoma, which is almost two hours east of Oklahoma City and is home to the East Central Electric Cooperative. Thanks in part to support awarded through the FCC's recent Connect America Fund Phase II reverse auction (CAF II), this electric cooperative will build gigabit-speed connections to thousands of locations in rural Oklahoma, including many occupied by Tribal residents of the Creek Nation.

We want similar results on an even greater scale from the Rural Digital Opportunity Fund.

To get there, we'll apply lessons learned from CAF II. First and foremost, we're going to conduct a reverse auction. Simply put, the CAF II reverse auction produced higher-speed broadband and lower costs. That's a killer combination that we want to replicate. And with the proposals that we advance today, we believe that the Rural Digital Opportunity Fund will spur the deployment of up to gigabit-speed broadband networks for millions of rural Americans over the next decade.

The new Fund's reverse auction will have two phases. Phase I will allocate support to wholly unserved census blocks—that is, those areas where our existing data tell us there is no service at all—in order to make sure that the areas most in need will get broadband service as quickly as is feasible. Then, Phase II will fill in the remaining coverage gaps by supporting networks that will serve partially unserved census blocks, along with areas not won in Phase I. Phase II will leverage the new granular, precise broadband mapping approach that the FCC will adopt today.

And while some have suggested that we should not move forward on Phase I until the data needed for Phase II has been collected, I strongly oppose this idea. Indeed, it makes about as much sense as deciding not to provide medicine to anyone suffering from an illness outbreak until everyone who is sick from that outbreak has been identified. There is simply no reason to delay action to provide broadband to Americans we *know* don't have access to it.

Today's *Notice* proposes other consumer-friendly steps. For instance, we're eliminating support for 10/1 Mbps service in the auction. The FCC has defined broadband as 25/3 Mbps for some time now, and in any case, the CAF II experience suggests that providing support for 10/1 Mbps service isn't necessary; over 99% of locations won in that auction will get 25/3 Mbps service or greater. And we're exploring ways to make eligible for auction support additional areas that haven't previously qualified but are still on the wrong side of the digital divide.

In short, we're proposing to connect more Americans to faster broadband networks than any other universal service program has done. I'm excited about what this initiative will mean for rural Americans who need broadband to start a business, educate a child, grow crops, raise livestock, get access to telehealth, and do all the other things that the online world allows. And I look forward to kicking off this new auction next year.

Thank you to the dedicated staff who worked on this item: Allison Baker, Talmage Cox, Ian Forbes, Lauren Garry, Jesse Jachman, Katie King, Heidi Lankau, Sue McNeil, Alex Minard, Kris Monteith, Ryan Palmer, Steve Rosenberg from the Wireline Competition Bureau; Kirk Burgee, Nathan Eagan, and Chelsea Fallon from the Rural Broadband Auctions Task Force; Craig Bomberger, Rita

Cookmeyer, Shabnam Javid, Evan Kwerel, Paul Lafontaine, Eliot Maenner, Giulia McHenry, Eric Ralph, Martha Stancill, and Margaret Weiner from the Office of Economics and Analytics; Garnet Hanley and Donald Stockdale from the Wireless Telecommunications Bureau; Thomas Sullivan and Jim Schlichting from the International Bureau; Matthew Duchesne, Barbara Esbin, Sayuri Rajapakse, and Patrick Webre from the Consumer and Governmental Affairs Bureau; and Malena Barzilai, Richard Mallen, Linda Oliver, and Bill Richardson from the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90.

This Notice takes necessary and appropriate first steps in establishing the FCC's largest and most ambitious universal service funding auction to date, and I am pleased to support it. Having been a longstanding proponent of reverse auctions to award USF support, I appreciate that this item proposes to adopt many of the same terms as the CAF Phase II auction. Distributing broadband funding in this manner is far more cost-effective than doing so via beauty contest-like grants, and our use of an auction mechanism is one reason I have urged Congress to direct any new federal broadband funding to the Commission. The current item's raw framework is the appropriate departure point to stretch scarce dollars as far as possible and bring broadband to many Americans without service.

In travelling our great country, I have witnessed firsthand those communities lacking broadband availability. For the most part, they were located in areas reportedly served by a price cap carrier. Fundamentally, today's item revisits the Commission's previous error in judgment that led to the creation of a CAF Phase II right of first refusal for price cap carriers in 2011. While many price cap carriers did deploy broadband in parts of their territory, we should be much further along given the billions of dollars that have already been spent.

Today, we are effectively opening access to federal support for any price cap area not adequately served already, as well as other unserved areas, in a relatively technology-neutral manner. I was a strong advocate of the latter principle in designing the CAF II auction and support its application here as well. While many tend to prefer fiber-based solutions, our resources are not unlimited, and our job is to get broadband to all Americans, regardless of technology. We simply cannot afford to exclude satellite-based providers, especially given the new and exciting possibilities satellite offerings can offer.

That being said, I had concerns about certain proposals in the item when it first circulated. Having included such a broad swath of areas eligible for the auction, I was worried that the draft did not contain sufficient incentives for providers to bid on those hardest-to-serve census blocks that have never received broadband funding and completely lack broadband infrastructure. Unlike the CAF II areas accepted by price cap carriers under the right of first refusal, which will be eligible for Phase I despite already offering 25/3 Mbps service in certain areas, the Remote Area Fund areas will likely prove much more challenging. Perhaps we wouldn't have found ourselves in this situation had the RAF been done at a much earlier point, which I have long-advocated.

Given these concerns, I asked the Chairman to provide an added financial incentive to serve the most challenging areas. I thank him and his team for working with my office to come up with a proposal that will help ensure the RAF areas are not left behind. These are the areas we need to prioritize and shouldn't be punted to a future action.

Adding such an incentive was especially important to me to counterbalance the item's problematic proposals with respect to Tribal areas. My views on this matter are well-known by now. Under the Commission's universal service mandate, all consumers—Tribal or otherwise—should have the option to purchase high-speed Internet access. To me, that means *everyone* deserves an equal chance when it comes to broadband access, and our policy shouldn't favor certain classes of Americans on the basis of group identity. Enacting such preferences, without a basis in need, is an inefficient use of scarce universal service dollars. That's especially true given the diverse conditions present on Tribal lands, and the fact that Tribal communities certainly aren't the only areas facing problems in obtaining service. I fully acknowledge that some Tribal lands are incredibly troubled when it comes to the availability of modern technology and represent some of the poorest areas in our nation. Others, however, are in fact

quite well off and feature high levels of broadband deployment.<sup>1</sup> Just like other areas of America, there are wealthy Tribal areas and poor ones, and it doesn't seem fair to give special treatment to all Tribes when a neighboring non-Tribal community may have equally poor or even worse broadband availability.

Thus, while I have significant concerns over our proposals to implement a Tribal Broadband Factor—which I previously criticized as it applied in the 2018 Rate-of-Return Reform item—and the arguably even more problematic Tribal bidding credit, I am willing to accept those components as long as the RAF areas are eligible for similar incentives. Further, I recognize that this item is still at the NPRM stage and look forward to the record shedding further light on maximizing the auction's efficiency. The bulk of the real work and requisite details on this matter will come in future items.

I vote to approve.

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<sup>1</sup> See, e.g., Letter from Donald L. Herman, Jr. and Clare C. Liedquist, Counsel to the Chickasaw Nation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 (filed Mar. 26, 2019).

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90.

Today's decision is more good news in our efforts to close the digital divide—to ensure that every American can access next-generation broadband, regardless of where they live. We are passionate about the opportunities that broadband can bring to rural America because we've all seen the difference a connection can make.

Last year, a provider connected Nye County, Nevada with fiber. It's a place that didn't even have phone service until the 1960s and where, before the fiber build, dial-up and painfully-slow DSL were the only ways to get online. I met a graphic designer who moved to one of the county's small towns to take care of her mom who had cancer. Without that fast fiber connection, she couldn't have continued to support herself and be close to her family in their time of need. At a kitchen table in Blue River Township, Indiana, I met another mom who realized her dream of reuniting her family on their farm with broadband. Her daughter had moved to a big city to work in advertising. But when the daughter became pregnant with her first child, she wanted to move her growing family back home. A fiber line plowed through corn fields made that possible: it allowed the daughter to work remotely and keep her ad job, while bringing the family back together in rural Indiana.

It's because of stories like these—stories of jobs, education, opportunity, and the chance to bring families together—that I am excited about the Commission's next great investment in rural Internet. The fund and auction we propose today would make available more than \$20 billion over the next decade. Those are significant resources, but we know they're needed to meet the challenge. Because while this Commission has made great progress in closing the digital divide—narrowing it by nearly 20 percent last year alone—the problem remains stubborn as we reach the most remote and underserved communities.

Today's proposal will go a long way towards reaching those hardest-to-serve communities. It does so by proposing 10-year support terms, which provide the certainty needed for these builds. It seeks comment on subscribership milestones, which can ensure efficient builds and the delivery of services that consumers will purchase. And it gives greater weight to offerings that can serve as the backbone for 5G services, which can help support a broad array of next-gen builds.

I would also like to thank my colleagues for agreeing to seek comment on a series of additional ideas. First, instead of treating every community with less than 25 Mbps fixed broadband the same, we now ask whether we should take a more granular approach. This might allow the FCC to prioritize communities that are truly unserved today over areas that already have 10 or 20 Mbps fixed broadband options. In addition, I am glad my colleagues agreed to ask whether mobile wireless offerings should be considered as part of that prioritization process, which could elevate the needs of communities that might have zero fixed or mobile service today. Second, we now ask whether there are more efficient ways to group census blocks in the auction—opening the proceeding to ideas that could achieve our goals without unnecessary federal outlays. Third, we now ask for feedback on how we might identify builds that are not succeeding earlier in the process, so we can ensure that ratepayer dollars are used wisely. Lastly, the document now provides even more clarity on how the mapping reforms we tee up in a separate item today can be used in these proposed auctions.

So thank you to the Chairman for laying out a long-term commitment to closing the digital divide, and thank you again to my colleagues for working with me on improvements to this item. And as always, I thank the staff of the Wireline Competition Bureau and the Office of Economics and Analytics for their hard work. The item has my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL,  
APPROVING IN PART, DISSENTING IN PART**

Re: *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90.

I believe the future belongs to the connected. No matter who you are or where you live, you need modern communications to have a fair shot at 21<sup>st</sup> century success.

I also believe that if you want to understand the infrastructure of the future—and how to build communications that will connect us all—you need to start by looking back. So I want to discuss the effort a century ago to bring another technological innovation to light—namely, electricity.

The 1920's roared for city dwellers in the United States. Automobiles, telephones, movies, and radio crept into the culture, changing so much of our civic and commercial life. But while our urban corridors benefited from these innovations, rural communities were often left in the dark. In fact, during this period while 90 percent of urban residents had access to power, only 10 percent in rural areas did. This was the electricity divide. And it was a persistent problem. Power companies insisted it was just too expensive to electrify rural areas. The math was hard. The odds at profit long. Sound familiar?

So policymakers in the United States in the 1930's decided that instead of waiting for this divide to fix itself, they would do something about it. They pushed energy infrastructure out to rural areas in the Rural Electrification Act.

This history is powerful. It is a reminder that we can help build infrastructure with the right policies in place. We can solve problems and do audacious things with the right policies in place. We can bring more opportunity to more places across the country with the right policies in place.

The United States saw this clearly with electricity. So following passage of the Rural Electrification Act, policymakers got to work. They started with maps. Rural electrification authorities set out across the countryside to start their effort by mapping where service was and was not. Those maps still exist today. They are frayed historical documents. But they are evidence that real work was done to identify the location of electric systems, transmission facilities, and farms with and without electricity. In other words, these maps helped ensure that the nation's policies were properly targeted to the areas that needed them most.

I think this history is instructive. Because what we need now is a Rural Digitization Act patterned on the success of the Rural Electrification Act. The parallels are real. Today's digital divide looks a lot like last century's electricity divide. You see it clearly in the limited presence of digital infrastructure in rural areas, the hard economics of deployment, and the lack of opportunities that result.

I think this framework—and the idea of a Rural Digitization Act—should inform our next big effort to expand broadband. So I think we should take our cues from the work to expand electricity. Just like we did nearly a century ago, we need to begin with where infrastructure is and is not. We need to start with data. We need to develop maps.

Of course, right now the Federal Communications Commission has broadband maps from operators. That's good for starters. But we need to do a whole lot better. Our maps need to be more granular. Then, they need to be verified. I want us to test what we have here in Washington with spot checks in the field, challenges from local authorities, and data from consumer crowdsourcing. This mapping effort is not going to be simple, but it's vitally important. It's where we need to begin if we want to understand the state of deployment and ensure digital infrastructure reaches everyone, everywhere. After all, we will never manage what we do not measure.

This is why today's rulemaking is so important. But there's something fundamentally wrong here. We do not start with maps. We do not start with data. In fact, take a look at the draft rulemaking

before us and it barely mentions the fact that we have a separate proceeding we are voting on today involving maps.

In fact, this rulemaking rushes past that effort and simply proposes a successor to our existing Connected America Fund, distributing \$16 billion dollars before *any* new data comes before this agency. Before *any* new maps are developed. I understand the impulse to move fast. I know that we should be working at warp speed to get modern communications to too many places that have waited too long for digital opportunity. So let's do it. But let's commit to doing it right.

This is putting the cart before the horse. Even carriers that might be beneficiaries of these funds have urged us to get the mapping right first. After all, the decisions we make now will direct funds for broadband for the next decade. So choosing where those funds go for the next ten years without having accurate data is a real problem.

It's also a shame that as we plan for the next decade our goals are so modest. We should be aiming high, with broadband speeds faster than today's standard of 25 megabits per second. If you look back ten years, you'll find that the FCC's broadband standard was 200 kilobits per second. That is comically slow today. But with this proposal we're taking today's standard and assuming it makes sense ten years hence. That's not right.

Thinking small didn't deliver the Rural Electrification Act and light up the countryside. It's time to think bigger and bolder. It's time to do so informed by good data.

I support this rulemaking in principle. But the proposal here misses the mark. We need to take a cue from our success in the past and address rural digitization like we did rural electrification. We need maps before money. We need data before deployment. I approve in part and dissent in part.



**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90.

Internet inequality in the US is deepening. We see it across rural and Tribal America and in cities that have either been left behind from fast broadband deployments or cities that are left to make do with speeds and technologies that are too slow and are long obsolete. And, in most cases, service providers have already built broadband everywhere where it makes business sense to them to do so, and there are often no plans for upgrades on the horizon. The vitality and very existence of communities is threatened when there are no affordable, quality broadband connections available. Students are unable to use the digital tools that are bringing the world into the classroom for most of their peers. Patients are unable to take advantage of new developments in telehealth and must continue to drive, often for hours, to distant urban centers for medical treatment. And, young residents are increasingly leaving these rural communities, taking with them all that the communities have invested in them.

The common factor that is missing in these communities is quality broadband infrastructure. Making sure that everyone in the US has access to quality affordable broadband is my highest priority and is our most important job at the Commission. The Universal Service Fund is our best tool to deliver quality broadband to all. Universal Service dollars are both valuable and limited and we must use them wisely to get broadband out to where it is needed. It is certainly right to think about the future of the program, as today's NPRM does, and it is important to have a plan to ensure that USF continues, in the upcoming decade. But, I don't agree with some of the fundamental proposals in the NPRM before us.

Our experience with using USF to support broadband buildout has shown us that we have to understand, in detail, the problem we are trying to solve before we start spending money to solve it. If we don't, we run the risk of throwing money to the wind and hoping that it lands in places where it will help. Specifically, we have learned that in order to understand the problem we need to know where broadband service is and is not available in the United States.

However, as members of Congress, stakeholders, and thousands of people across the country have told us, the broadband data that we collect through the current Form 477 process and the maps that we create with it do not give us a clear understanding of where broadband is and is not deployed. I therefore find it surprising that the Commission proposes spending \$16 billion dollars - nearly 3/4 of the USF support the FCC intends to use over the upcoming decade - without any improvement to the data it will use and without any reliance on updated and improved maps to tell us where the money needs to go. I understand that the 477 data may, when it is filed accurately or when the Commission identifies and fixes errors it contains, be useful for identifying census blocks lacking fixed broadband service. But, the fact of the matter is, this is the same data set, from which the recent Barrier Free debacle, with its overstatement of service by more than 60 million lines, arose. Simply put, I'm not confident in this data and I'm not confident that it tells us where broadband is and is not deployed in the US. And as long as the Commission continues to use this data for policymaking, it's our responsibility to ensure that it is accurate and reliable as possible.

As with any policy making exercise, the proposed Rural Digital Opportunity Fund we are considering today appears to have involved making choices. Choices between how quickly to hold the next USF support auction, how much money to allocate in the auction, how long the support provided in the auction will last, and how confident the Commission is in the accuracy of the data underlying the auction. And, these choices are interrelated. The quicker the time to auction, the less time there is to ensure that the data is accurate. And, the higher the budget and the longer the term of support, the greater the consequences of having inaccuracies in the underlying data mistarget Universal Service dollars.

It appears to me that in making the Rural Digital Opportunity Fund proposal, the FCC is choosing speed to auction over accuracy. But, at the same time, this choice includes a huge budget - \$16 billion dollars – and a long term of service – 10 years. I don't think these choices strike the right balance. If speed to auction is the primary concern, and I certainly understand the urgency of getting support out to areas that need it the most, then the Commission could have chosen to proceed rapidly, but with a smaller initial budget and a shorter service term to get service out to areas that need it the most while bringing the Digital Opportunity Data Collection that we start today up to speed. And, when improved data and maps are ready, the Commission could then proceed with additional support for longer terms. But that is not the proposed approach.

Ultimately, I think that plans for the future of Universal Service need to start from a foundation of accurate data and maps and build from there. I am hopeful that the Digital Opportunity Data Collection that we are launching today will lead to such a foundation, but I have concerns about starting the next phase of the Commission's Universal Service Program, a phase that contemplates using \$16 billion dollars, without having better data and maps in place.

That said, I also recognize that that the Rural Digital Opportunity Fund proposal builds off of the success of the Commission's Connect America Fund support auction and that it contains many good ideas for continuing the Commission's work in this area. I look forward to reviewing the record and to working with my colleagues to plan for and shape the future of the Commission's Universal Service program. This is our greatest responsibility - the mission of eliminating internet inequality is too important, and the dollars are too precious to get it wrong.

I thank the staff of the Wireline Competition Bureau for their long-term commitment to ensuring that USF works to make high-quality broadband available throughout the US and I thank everyone involved for their work on this NPRM.